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THE
AMERICAN SECRETARIES OF STATE
AND THEIR DIPLOMACY

VOLUME I

VOLUME II

THE AMERICAN
SECRETARIES OF
STATE AND THEIR
DIPLOMACY

SAMUEL FLAGG BEMIS

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ADVISORY BOARD

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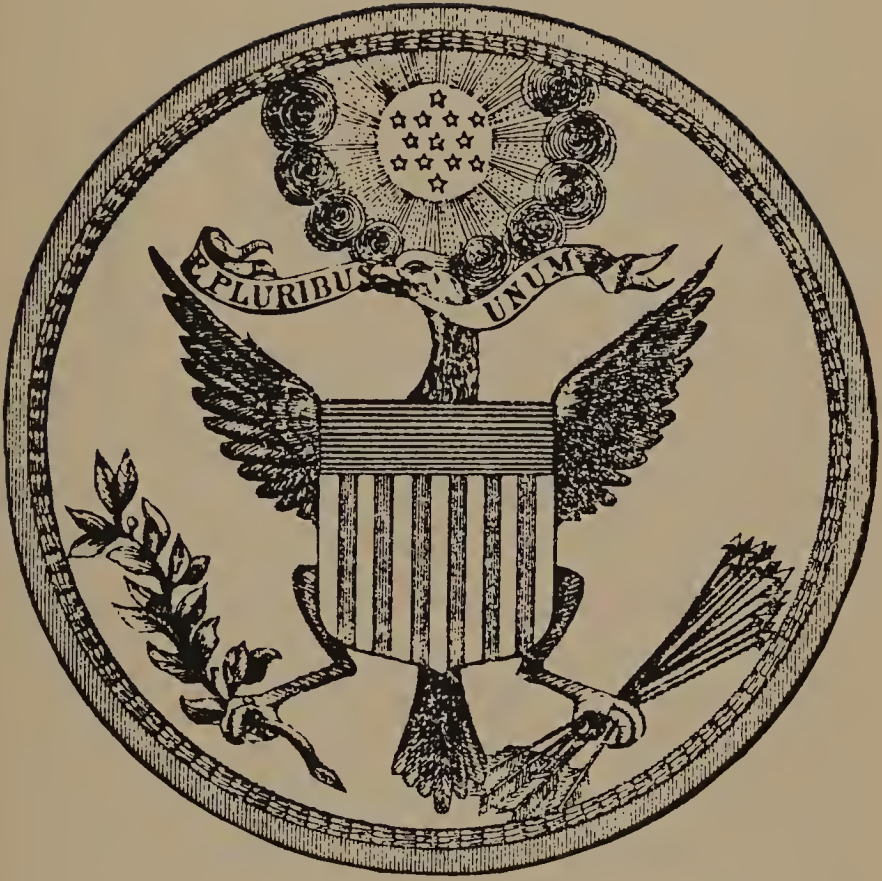
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TO THE MEMORY OF
GAILLARD HUNT

FAITHFUL PUBLIC SERVANT,
SCHOLAR AND FRIEND OF SCHOLARS

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GREAT SEAL OF THE UNITED STATES

P R E F A C E

THESE volumes are intended to record the history of a great public office in terms of the lives of the men who have successively held it, as well as the history and the development of the international policies of the Government of the United States in terms of the public acts and expressions of the men who have been successively charged with the statement of them. The plain purpose is to bring vividness and life into what might readily become a dry and uninteresting history. By interweaving the story of the activities and the personalities of the men who have held the office of Secretary of State with the story of the work of that office itself, it is hoped and believed that a very large number of readers, both in this country and elsewhere, will be brought to take a new interest in matters of foreign policy and foreign relationship and to have a new understanding of them.

An obvious fact is the exceptionally conspicuous character of most of the men who have held the office of Secretary of State. One who is familiar with

American political history will find in that list rich suggestiveness and ample food for reflection. Of the forty-two incumbents of the office, six became President of the United States, and, in addition, no fewer than thirteen were at one time or another active candidates for that office, either at the polls or in the councils of their respective political parties. This fact emphasizes not only the conspicuousness of the men themselves, but the representative character of their public service.

The term, Department of State, as used in the Government of the United States, has been given a peculiar and restricted meaning. In the Government of Great Britain there are four principal Secretaries of State, one for the Home Office, one for Foreign Affairs, one for War, and one for the Colonial Office. In the Government of the United States, however, the Department of State is, in the popular view, that branch of the Government which has to do with foreign relations, although, as a matter of fact, it is also charged with certain important and interesting functions that have to do with domestic administration.

The Department of State was the first to be organized under the Constitution, and the original intention was that it should be solely a department of foreign affairs. Almost immediately, however, its jurisdiction was extended in a way that made it the

keeper of the Great Seal and of the acts and records of the Congress. From time to time various other duties were assigned to the Department, most of which have passed since out of its jurisdiction. Among these are the work of what is now the Patent Office, the present duties of the Library of Congress in relation to the care of books, maps and charts for which copyright has been granted, the superintendence of the census, the administration of the territories, the registry of American seamen and of arriving aliens, and the management of the mint. Indeed, as constituted in the early years of its existence, the Department of State had concern not only with foreign affairs, but, as Thomas Jefferson recorded, of all domestic administration except matters relating to finance and war. These latter functions are not stressed in this series.

As the years have passed, the domestic duties of the Department have become inconspicuous, and it is chiefly, and in the public view solely, that department of government which has to do with foreign relations. No nation which on its day of birth laid emphasis upon "a decent respect to the opinions of mankind" could fail to have foreign relations that were both constant and intimate. Such, indeed, has been the fact. Even before the nation came into existence and while its struggle for independence was under way, its most potent voices were carefully ex-

plaining to the governments of Europe what the ambitions of the American people were and what their grievances. The earliest treaty made in the name of the American people was that treaty of amity and commerce with France which was concluded at Paris, February 6, 1778, and ratified by the Congress on May 4 following. Both this treaty and the treaty of amity and commerce with Prussia, which was concluded September 10, 1785, both of which treaties bear the signature of Benjamin Franklin, are admirable in their scope and the latter, at least, almost prophetic of modern progress in some of its provisions. It is an illusion to suppose that the Government and the people of the United States have ever been in isolation from the life and the public interests of the rest of the world.

America was not isolated and aloof from the rest of the world after Thomas Jefferson wrote into the opening paragraph of the Declaration of Independence that a decent respect was owed to the opinions of mankind; nor when, in 1778, the Continental Congress ratified the treaty of alliance with France, to which reference has just been made; nor when, in 1794, the Jay Treaty with Great Britain was concluded and shortly thereafter ratified; nor when, in 1801, Thomas Jefferson, in his first inaugural address, enjoined equal and exact justice to all men of whatever state or profession, religious or political; nor

when, in 1803–1804, American naval forces under Preble and Decatur were taking an active part in the suppression of the Barbary pirates; nor when, in 1818, immense enthusiasm was aroused by the dramatic eloquence of Henry Clay on the floor of the House of Representatives in behalf of the eighteen millions of South Americans who were struggling to break their chains and be free; nor when, in 1823, James Monroe, in his seventh annual message to the Congress, laid down certain principles to govern the relations between the United States and European nations in matters affecting the American continents; nor when, in 1824, Daniel Webster electrified the House of Representatives and the country by his moving appeal on behalf of the people of Greece; nor when, in 1854, Commodore Perry negotiated the treaty which opened the Empire of Japan to the influences of western civilization; nor when, in 1861, President Lincoln surrendered the Confederate envoys, Mason and Slidell, in response to the protest by the British Government against their being taken from a British ship on the high seas; nor when, in 1881, Secretary Blaine issued his call for the first American International Conference, which set the example and paved the way for so much that has come after; nor when, in 1898, the treaty of peace with Spain brought to the United States sovereign power over the island of Porto Rico, the island of

Guam, and the vast archipelago known as the Philippine Islands; nor when, in 1899, Secretary Hay wrote his instructions to the members of the commission appointed to represent the President of the United States at the First Hague Conference, and when that commission, headed by Andrew D. White, submitted its report; nor when, in the same year, Secretary Hay secured the adoption of the Open Door policy for China; nor when, a year later, American soldiers and marines participated with the armed forces of other nations in suppressing the Boxer movement in China; nor when, in 1905, Russia and Japan, after accepting American mediation, suspended hostilities in the war which they were waging in Asia, and later signed at Portsmouth, New Hampshire, a treaty of peace bringing to an end a war in which the American people had no direct interest whatsoever; nor when, in 1907, Secretary Root wrote his instructions to the members of the commission appointed to represent the President of the United States at the Second Hague Conference, and when that commission, headed by Joseph H. Choate, submitted its report; nor when, after August 4, 1914, following the violation of the pledged neutrality of Belgium and the shocking atrocities committed by the invading armies in Belgium and in France, a thrill of indignation and horror ran over our people from the Atlantic to the Pacific, mounting month

by month as evil deed succeeded evil deed, until finally on April 6, 1917, the end was reached and the Government caught up with the people's outraged sense of liberty, of decency, and of justice; nor when, on July 10, 1921, President Harding invited a group of powerful nations to send representatives to Washington to confer as to how the economic burdens of the several peoples might be lightened, as to how the size and cost of armaments might be reduced, and as to how America might aid in helping on the rule of right in the public affairs of men; nor when, a few months later, American representatives signed and the American Senate ratified formal treaties obligating the United States to advance these causes in co-operation with a notable group of other nations.¹

A nation, like an individual, has a moral opportunity to use and a moral character to build. The test of a nation, like the test of an individual, is to be found in the relations in which it lives with its neighbours. If the nation, as the individual, is selfish, self-centered, grasping, mean, arbitrary and discourteous, its character is bad and its ethical development of the lowest. If, on the other hand, the nation, as the individual, is unselfish, regardful of others, generous, broad-minded, kindly and co-operative,

¹ Butler's: *The Faith of a Liberal*. New York, Charles Scribner's Sons, 1924, p. 32-34.

then its character is good and it is rising in the scale of moral excellence. To represent and to protect a nation's interests are sound aims, provided that the nation's highest interests be not excluded from the calculation. No amount of wealth or of prosperity or of commerce or of material comfort can compensate a nation for the loss of its soul. That nation which cannot act toward and with its fellows as an upright individual acts toward and with his neighbours is neither to be admired nor respected.

The Department of State can, and does, play a large part in the development of a nation's character. In last resort it must, of course, be guided by public opinion, but it can do much, very much, to instruct and to lead public opinion toward right conclusions and noble acts. The greatest Secretaries of State have invariably done this, and the volumes that follow are the record of their lives and works.

NICHOLAS MURRAY BUTLER

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

December 1, 1925

The Editor has taken advantage of this reprint of 1958 to correct misprints in Vol. II, page 69, line 15, Vol. V, page vii, line 10, and Vol. X, title page. S.F.B.

EDITOR'S PREFACE

TO VOLUME I

THE following volumes are prepared in accordance with the plan of the late Gaillard Hunt, Chief of the Division of Publications of the Department of State, and James Brown Scott, Secretary of the Carnegie Endowment for International Peace. Dr. Hunt's lamented death on March 20, 1924, prevented him from taking up actively his contemplated task of editing and contributing to them in conjunction with Dr. Scott.

It is not pretended here to present a synthetic history of American diplomacy, but rather to reflect, through the medium of sketches of the career and the diplomacy of each of the several Secretaries of State, a readable and authoritative narrative of the more important phases of American foreign relations, particularly in so far as they are to be connected with any one Secretary.

Biographical details of the life of any Secretary of State before he came into office, and after he left the Department, are condensed into a minimum of space, although every effort has been made by the contributors to the series to deal with those phases of biography which are pertinent to an understanding of the man's career as Secretary of State. Obviously, the life of a Jefferson, a Marshall, a Madison, a Monroe, a Clay, or a John Quincy Adams, to refer only to some early examples, has more significance for the student of American

history in activities outside the Department of State than in the incumbency of that office. Into these wider fields this narrative cannot go, except to show the influence which such men, later as Presidents, had upon their own Secretaries of State. Nor are these volumes concerned with the numerous ancillary functions of the Department, not connected with the administration of foreign affairs.

Before the final organization of the Department of State in 1789 and the installation of Thomas Jefferson as first Secretary of State in 1790, the machinery for the administration of our foreign affairs had already been largely developed, and the impress of several men—of two particularly, Robert R. Livingston and John Jay—had been left upon that department of the Government under the Articles of Confederation. The Department of Foreign Affairs itself, over which these men presided, was an outgrowth of the committee experiences of the Continental Congress after 1775. Therefore, it has seemed necessary, in such a series as this, to devote an introductory volume to the administration of American foreign affairs before 1790.

Dr. Scott, in the historical introduction with which the series begins, has traced the development of our early foreign policy and its administration through the period of the Revolutionary War, including the French alliance and the negotiation of the treaty of peace with Great Britain of September 3, 1783. Professor Bonham has presented a picture of Robert R. Livingston as the first Secretary for Foreign Affairs of the Continental Congress, describing his influence upon the organization of the business of that office and his superintendence of

the activities of our diplomatic representatives in Europe. While Livingston's influence upon the organization of the business of the office was very great, and while his understanding of American diplomatic problems was second to that of no man remaining in America, it is to be observed that the American peace commission and other representatives abroad were left with a very large measure of discretion, and acted under instructions of Congress which gave them considerable initiative; it also must be remembered that Livingston never had the full executive powers of a later Secretary of State, and the same is true of John Jay, his successor to that office, although Jay succeeded in securing from Congress a larger degree of independence in the administration of his office and brought to that Department the prestige of his very considerable experience in practical diplomacy and his wide acquaintance with foreign affairs and personages. Jay himself was also the personal instrument of important negotiations with Spain. Again, he was the connecting link between the Department of Foreign Affairs under the Articles of Confederation, and the Department of State under the Constitution of the United States, which latter office he, while Chief Justice, actually held *ad interim* until Thomas Jefferson took over the Secretaryship on March 22, 1790. It has been the purpose in the sketch of Jay as Secretary of Foreign Affairs, written by the Editor, to set forth the career and the diplomatic achievement of that important personage.

It is proper at this place to acknowledge the assistance which has been so freely and abundantly granted to this publication. The Carnegie Endowment for International

Peace has placed at the disposal of the Editor clerical assistance and office space, in addition to the resources of its excellent working library in Washington on international affairs: the Library of Congress, great workshop of scholars in America, has been of immense service, particularly in the courteous assistance granted by the Librarian, Dr. Herbert Putnam, and Dr. Charles Moore, Chief of the Division of Manuscripts, and his able staff, including especially Dr. John C. Fitzpatrick. The Department of State has been of indispensable service. Contributors to the series have been allowed unreserved access to the diplomatic correspondence in the archives of the Department down to the year 1905, and the Department has been at all times willing to verify for such contributors statements in their manuscripts which relate to confidential material in the archives of later date than 1905. In this connection, acknowledgments should be made to the Honourable the Secretary of State, to the Chief of the Division of Publications, Dr. Tyler Dennett, and to Mr. David A. Salmon, Chief of the Division of Indexes and Archives. The scholars who have assisted the Editor in an advisory capacity, Dr. J. Franklin Jameson, Dr. H. Barrett Learned, and Dr. James Brown Scott, have rendered assistance and counsel which cannot be duplicated.

It is hoped that this first volume will introduce the reader properly to the consecutive administrations of the several Secretaries described in the nine following volumes, whose administrations end with the first one hundred and fifty years of American independence.

S. F. B.

HISTORICAL INTRODUCTION

BY

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BENJAMIN FRANKLIN

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B. Franklin

HISTORICAL INTRODUCTION

CHAPTER I

A NEW NATION SEEKS AN ALLY

THE foreign policy of a state or nation necessarily pre-supposes its existence as a political body; therefore, the foreign policy of the United States supposes the existence of the thirteen original states united either in fact or in law, in order to devise and to carry out a policy of the states in their united, as distinct from their individual capacities.

The United States came into being on the 2nd day of July, 1776, when the second Continental Congress, representing the thirteen colonies, adopted a resolution which, two days later, on the 4th of July, was formally issued as their Declaration of Independence.

The experience which the colonies had of a kind to prepare them for the conduct of foreign affairs resulted from their occasional intercourse with one another and from their frequent intercourse with the government of the British Empire. The different colonies had felt the necessity of having representatives in London from the end of the French and Indian War, even before the establishment of committees of correspondence among themselves. The best known of these colonial agents was Benjamin Franklin, soon destined to be the most famous of all American diplomats, who represented not

only Pennsylvania, but also Massachusetts, Georgia and New Jersey. On the other side of the water the British statesman, Edmund Burke, a friend of American liberty, was agent for New York. It was natural, therefore, that the second Continental Congress, in advance of the Declaration of Independence, should use the agencies with which the colonies had become familiar at home and abroad.

Decisive action in this direction was taken by the Congress on November 29, 1775, by a resolution appointing a committee of correspondence consisting of five members, providing for the expenses of their correspondence with their "friends in Great Britain, Ireland, and other parts of the world," and for the agents which the committee might employ in this service. The members of the committee were Benjamin Harrison, of Virginia; Benjamin Franklin, of Pennsylvania; Thomas Johnson, of Maryland; John Dickinson, of Delaware; and John Jay, of New York.

It was deemed advisable by the committee to have an agent in Europe who, as a member of Congress, would represent its ideas. For this purpose Silas Deane, of Connecticut, was selected, and instructions for him were prepared by Dr. Franklin on behalf of the Committee. He was to give himself out as engaged in the Indian trade, for it was deemed improbable at the time that France would care to have it known that an agent from the colonies was at its Court. Deane was to meet the Count de Vergennes, then and during the period of the war, Minister of Foreign Affairs. Should he be reserved, Deane was to cut the audience short. "If, at a future conference, he should be more free," and manifest "a

disposition to favor the Colonies," Deane was "to acquaint him that they must necessarily be anxious to know . . . if the Colonies should be forced to form themselves into an independent State, France would probably acknowledge them as such, receive their ambassadors, enter into any treaty or alliance with them, for commerce or defense, or both?" Deane was also to learn what conditions France would attach to such acknowledgment.¹

The date of these instructions is March 3, 1776—before the Declaration of Independence. In the meantime, supplies were needed, and if the French Government was unwilling to provide them upon the credit of Congress, Deane was to obtain permission to purchase to the extent of his credit arms, ammunition, and other articles needed for the conduct of war. Franklin truly said that they were "pitching" on France; and the process continued until any scruples which the Government of that country may have had to furnish supplies, to acknowledge the independence of the states, and to enter the war as an ally, were overcome.

Vergennes was found friendly to the cause of the colonies, even to the extent of participation, but his great colleague, Turgot, Controller-General of Finance, was opposed to participation—a view likewise shared at that time by the young sovereign, Louis XVI. Nevertheless, matters were moving rapidly in a direction favourable to the new states, when news arrived of the disaster which had befallen American arms at Long Island on August 27, 1776. The opponents of recognition and participation were strengthened by this dire event. Vergennes himself was haunted, obsessed, by the fear that

the states themselves might listen to overtures from the mother country, and accept terms short of independence, leaving them local autonomy within the British Empire. On the other hand, the fear of defeat of the colonies was a spur to Vergennes. Although France had lost Canada, it still possessed footholds in the West Indies. These would be extremely valuable to Great Britain, with larger American possessions; and if the British colonies should be retained, the French possessions would, in the hands of England, be exceedingly valuable, not only to Great Britain, but to the reconciled colonies.

There was another difficulty. France and Spain had kings of the house of Bourbon, and they had contracted, August 15, 1761, a permanent offensive and defensive alliance known as the Family Compact. In any event, France would prefer to have an ally in any American adventure, instead of having to bear the brunt alone; but in view of the relations between the two countries, it was necessary first to communicate with Spain, and, if possible, to secure its co-operation.

If Spain were to enter the war, it must be for a reason other than aid extended to the American colonies. That country then had an indefinite claim to American territory west of the Mississippi, extending unbroken except for Brazil south around Cape Horn and north on the Pacific coast towards Alaska. What if the spirit of independence should spread to the Spanish colonies? If Spain should countenance and stimulate the principle of revolt in the English colonies, could it later object if England or some other power pursued the same policy towards Spanish colonies? Spain had designs of her own.

against Great Britain. Spanish statesmen chafed at the loss of Minorca in 1763, and resented the possession of Gibraltar by Great Britain—a rock in the ocean which controlled the entrance to the Mediterranean and cast its shadow on the European dominions of His Catholic Majesty. The Spanish Government, therefore, was not averse to a war with England, but it wanted a war which would not return to plague it, and a war solely in its own interest, of which it claimed, and rightly, to be the judge. Accordingly, Spain refused to recognize the independence of the United States, and continued so to refuse recognition, until Great Britain herself had been forced to grant it.²

The purpose of Deane's mission to France was first and foremost to secure arms, ammunition and supplies, on the well-founded view that without these, it would be impossible successfully to resist Great Britain, and that without such prospect of success, France might be unwilling to procure the independence which it was asked to recognize. Fortunately, Vergennes was at one with Deane in this regard, and, also fortunately, Spain was willing surreptitiously to be a party to such plans. The munitions and supplies, in order not to compromise openly French neutrality, were furnished by the two Bourbon monarchs by means of a fictitious commercial firm, established by that genius among political adventurers, Caron de Beaumarchais. Indeed, the author of *Le Barbier de Seville* and *Le Mariage de Figaro* never staged a more successful plot. Months before the Declaration of Independence he was in London on a secret mission of another order. As a result of his observations at that time, he had laid before Louis XVI a report highly

favourable to the cause of the colonies. He thereupon returned to London as an unofficial agent of Vergennes. Arthur Lee was in London at the same time, as agent of the colonies. They entered into relations, the result of which was the organization of the spurious but very famous commercial house of Roderique Hortalez et Compagnie. The silent partners of the firm were France and Spain. Beaumarchais laid a second report before the King, which admittedly had great influence at the time, and later inclined the doubting Thomases of the Court to the American cause.

Beaumarchais received a million livres from the French Government on June 10, almost a month before the Declaration of Independence. On the 11th of August, a little more than a month after the Declaration, Beaumarchais received a secret Spanish million livres.³ The firm became well established. It is not necessary to attempt to trace in this place its varied activities. Its services to the American cause in one item will suffice, because without these services, or others of a like kind from other quarters, the American Revolution might have been a mere rebellion. There is a wholesome maxim which counsels to "trust in God, and to keep your powder dry." The Americans lacked powder. "Our want of powder is inconceivable," wrote General Washington, on Christmas Day, 1776. All the powder in the colonies at the outbreak of the war had been used up, as well as much of that which had been imported. Powder, however, kept coming from the outside. A relay of powder enabled Washington to take Dorchester Heights. The campaign of 1776 was fought, and after it came the victory of Saratoga. Eighty thousand pounds of powder

were on hand when the Revolution began, 115,000 pounds were manufactured from American saltpetre and 698,245 pounds produced from imported saltpetre, and there were 1,454,210 pounds of imported powder, making in all 2,347,455 pounds. It has been concluded from these figures that well over ninety percent of the powder used in the first two and a half years of the war came from the outside. Where did the powder come from? France. How did it come from France? Through the firm of Rodrigue Hortalez et Compagnie, establishment of which was due to France under the combined influence of the American, Arthur Lee, and the Frenchman, Pierre Auguste Caron de Beaumarchais. What would have happened if the powder had not come? In the measured judgment of Dr. Stephenson, from whom these statistical details are taken, "if it had not been for the great quantities of powder obtained by importations from France before the Saratoga campaign, the Revolution would have broken down long before that time."⁴

It would have been of inestimable benefit to the Revolutionary cause if Canada could have been detached from Great Britain, but the policy of the Americans towards Canada was as foolish as that of Great Britain towards the thirteen colonies.

The New Englanders had protested against the Catholics in the north, and the Quebec Act of 1774, extending the boundaries of Canada to the Ohio, seemed to them a menace. In their protests they indiscretely condemned what they were pleased to call "Popish practices." On the eve of hostilities, bethinking itself of the means whereby the Canadians might be led to make

common cause against the mother country, the Continental Congress issued an address to them, stressing political, and particularly religious liberty. The address, translated into French, made a brave showing, produced some effect, and led to a desire to read the previous documents relating to Canada, which the Canadians understood had been issued. It was not necessary to proceed far in the translations to observe the difference—whatever hope there might have been from the reading of the last document vanished with a knowledge of the previous declarations.

The British had looked upon Canada as the key to the situation in North America, and although the Ministry did not follow the advice of Sir Guy Carleton, Governor of Quebec, to strengthen the citadel of Quebec, that stronghold nevertheless held out when, on the very last day of December, 1775, the invading Americans under Montgomery and Arnold stormed it. In the month of May, the appearance of British reinforcements in the St. Lawrence, below Quebec, ended at that time all hope of success by force of arms. Decimated by sickness and discouraged by failure, the American troops slowly withdrew, and with their withdrawal the dream of a fourteenth original state of the Union vanished for the moment.

Before the debacle Congress had decided to send to Canada a commission, composed of Benjamin Franklin, of Pennsylvania, and Samuel Chase and Charles Carroll, two representatives of Maryland, the Catholic colony. They were accompanied, at the invitation of Congress, by Charles Carroll's cousin, the Reverend John Carroll, a Jesuit priest, who, later, through Frank-

lin's recommendation, was to become the first Catholic bishop of America.

Canada was Franklin's passion. It was he who had persuaded the British Government to extend its operations in the Seven Years' War from Europe to Canada, and it was not surprising that he should head the mission to Canada.

It set out on April 1, 1775, and reached Canada only to find the sentiment overwhelmingly in favour of the British Government, which in its treatment of the Canadians had displayed statesmanship and wisdom of the highest quality. When their attention was called to the grievances of the colonies to the south at the treatment of Great Britain, the Canadians could only express satisfaction at the way in which Canada had been treated. The commissioners returned within a few weeks, convinced of the futility of their endeavour. The resort to arms had already failed.

The danger which the colonists foresaw if Canada remained in the hands of the British was not imaginary. Had Sir Guy Carleton, instead of Burgoyne, commanded the expedition of 1777 from Lake Champlain to join Clinton from New York, the Revolution might have failed at the outset; for in the absence of the victory of Saratoga, it is doubtful if there would have been an alliance with France.

The first diplomatic mission of the United States did not augur success for the future. Franklin, its leader, was now hurried across the ocean in October, 1776.

Before Dr. Franklin embarked upon his French adventure, which was to be memorable even in the life of that illustrious man, he drafted a paper setting forth the

advantages which the possession of Canada would give to the colonies. He appears to have laid this before the members of the Committee on Foreign Affairs, of which he was chairman, but it does not seem that these estimable gentlemen had time—or took time—to consider it. Six years later he endeavoured to persuade or force Great Britain to cede the northern province to the United States, and he might have succeeded in the negotiations with the British commissioners if he had been supported by his colleagues on the American peace commission.^{4a}

Dr. Franklin's recent visit to Canada had no doubt quickened his interest in that country, although he suffered greatly there from the inclemency of the weather. In the sketch of propositions for a peace he advocated the cession of "the provinces or colonies of Quebec, St. John's, Nova Scotia, Bermuda, East and West Florida, and the Bahama Islands, with all their adjoining and intermediate territories now claimed by her," in order, as he had said by way of preamble, "to prevent those occasions of misunderstanding, which are apt to arise where the territories of different powers border on each other, through the bad conduct of frontier inhabitants on both sides."⁵

He was not unaware of the commotion which such a proposition might create on the part of the British Ministers; therefore, he suggested that they might be acquired by way of purchase. His motives for proposing a peace at this time were that the proposals would find supporters among the merchants and manufacturers as well as the landed interest, and thus a division of British sentiment would be created; that the proposed

treaty with France would be expedited; that the price to be paid for British possessions would prove a trifle compared with their value; and that having such propositions to make would be a protection to the commissioners and also furnish a pretext for Franklin's going to England where he could, were the terms not accepted, work up a considerable division of sentiments in the nation as greatly to weaken its exertions against the United States and lessen its credit in foreign countries.

It will be observed that Dr. Franklin hoped to divide the British people by his offer, just as later the British Ministry formed the design of dividing the American commissioners and their French ally. Each was wise in its way and day.

CHAPTER II

THE FRENCH ALLIANCE

SARATOGA was won, and with it the Revolution, for upon the arrival in France of news of the surrender of Burgoyne's army, the enthusiasm was such for the American cause that Vergennes was able to break down official opposition to the recognition of American independence, and to accord the undisguised, open and effective aid of France for its realization. Before this, however, Franklin had been commissioned to France, with Silas Deane and Arthur Lee as his colleagues; and it might well have been that even Saratoga would have been unavailing had it not been for the confidence and enthusiasm which Franklin, whom Matthew Arnold considered as the greatest American, inspired in all circles of France. His influence was amazing. He not only "took" Paris, he took France; and taking France meant the independence of his country.

The time had come to act, and Vergennes decided to recognize the independence of the American states by negotiating with them a treaty of amity and commerce. On December 6, the King of France authorized overtures to the Americans. However Vergennes stated, six days later, that he could not go ahead with a commercial treaty without the concurrence of Spain. But rumours were in the air of concessions to the revolted colonies on the part of Great Britain. On this very 6th of December, one Wentworth, an American-born British agent, had

received a commission directing him to ascertain the American commissioners' idea of a peace, to secure full information of their relations with France, Spain and the other powers of Europe, the naval preparations under way in the two Bourbon monarchies, and in general everything of significance as to the rapidly developing European crisis, which it was hoped to prevent by interesting the Americans in a peace negotiation before they could conclude an alliance with France. Of course, Wentworth's presence in Paris was known to the French Government through its spies, just as assuredly as the actions of the American commissioners were known to the British Government through its secret agents in that city.

On December 17, 1777 (an important date in the history of the United States, as will shortly appear), Wentworth had a secret and confidential interview with Deane. He suggested, according to an abstract of the interview, "that the war had been forced on the British ministry by circumstances not under its control, that they were now anxious to undo a mistaken policy . . . He then broached a program for which, he said, he was solely responsible, namely a reversion to the colonial status of 1763 with a repeal of the obnoxious acts passed since that date."⁶ Deane, however, insisted on absolute independence.

On this same 17th of December, Gérard, one of the secretaries of the Ministry of Foreign Affairs, waited upon the American commissioners and informed them of the King's decision, as reported to Congress by the American commissioners, "to acknowledge our independence, and make a treaty with us of amity and com-

merce; that in this treaty no advantage would be taken of our present situation to obtain terms from us which otherwise would not be convenient for us to agree to; his majesty desiring that the treaty, once made, should be durable, and our amity subsist forever, which could not be expected if each nation did not find its interest in the continuance, as well as in the commencement of it." The treaty was to be so drawn that the United States would be willing to agree to it if its independence had already been recognized, and it had become a great and powerful nation. Its independence was not only to be acknowledged, but to be supported. No compensation would be expected from the United States on that account, and Gérard expressly stated that His Majesty did not "pretend that he acted wholly for our sakes; since, besides his real good will to us and our cause, it was manifestly the interest of France that the power of England should be diminished by our separation from it." His Majesty would not insist that the United States should not make a separate peace, and they might do so whenever good and advantageous terms were offered. There was, however, one condition, and apparently only one, which France required: "that we, in no peace to be made with England, should give up our independence and return to the obedience of that government."⁷ The American commissioners were authorized to inform their government of this proposed action, but that negotiations to that effect could not be concluded until a reply from Spain. The reply, received from Spain on December 31, was a refusal to be a party to the negotiation.

One Bancroft, friend of Franklin and confidential secretary of the American commission, was, as has been

recently conclusively established, in the employ of the British Government. He turned over to the American commissioners a letter which he had received from an unidentified correspondent in England on December 17, 1777, telling him that the Government intended to make, through Parliament, an offer of peace, as soon as the recess was over, and "requesting him, in view of his close connection with the Commissioners, to discover what terms will be acceptable to them." Franklin turned this letter over to Vergennes. This was the day on which Wentworth had had his interview with Deane, and the American commission was informed of the intention of France to recognize the American States.

Wentworth met Franklin on January 6, 1778. Silas Deane was present, but Arthur Lee was not—at Wentworth's express request. Franklin let it be known at the outset "that the Americans would consent to no peace without independence, that he had no powers to treat, and that he could not have anything more than a polite conversation with anyone who had no powers on the part of Great Britain." Franklin was not particularly pleased with the various suggestions of Wentworth, who "tried to 'moderate' him, and repeatedly endeavored to bring him back to the point, and to demonstrate the advantages of maintaining an imperial union." The most that Wentworth could obtain was a statement that, "if the [British] commissioners were appointed to meet them properly authorized he would treat of Peace."⁸

On the following day, the 7th of January, a meeting of the French Royal Council was held, at which it was agreed to conclude two treaties with the United States

— the first to be of amity and commerce, the second to contain the clauses referring to the war which might result from the treaty of amity and commerce. In this treaty of alliance it was to be specifically stated that its purpose was to secure “the absolute and unrestricted independence of the United States,” which, however, should not conclude peace without the previous agreement of France, and that the possessions of the contracting parties in America and the West Indies should be mutually guaranteed, reserving, by a secret article, the right of Spain to adhere later to this alliance.

On the evening of the 8th of January, 1778, Gérard repaired to the American commissioners at Passy and informed them of what had taken place at the meeting of the Council of the previous day. Thereupon the Frenchman put to them two questions, to which the answer, as well as the first question, are preserved in Franklin’s handwriting in the Ministry of Foreign Affairs:

“Question, What is necessary to be done to give such satisfaction to the American Commissioners as to engage them not to listen to any propositions from England for a new connection with that country?”

“Answer, The Commissioners have long since proposed a treaty of Amity and Commerce, which is not yet concluded: the immediate conclusion of that treaty will remove the uncertainty they are under with regard to it, and give them such a reliance on the friendship of France as to reject firmly all propositions made to them of peace from England, which have not for their basis the entire freedom and independence of America, both in matters of Government and commerce.”⁹

The second question sought to obtain from them the terms which would prevent the American Congress and people from entering into an arrangement with Great Britain short of independence. Three days later, on the 11th, Deane, on behalf of the commissioners, replied, “‘an immediate engagement’ on the part of France ‘to guarantee the present possessions of the Congress in America, with such others as they may acquire on the continent during the war, and either to enter into a war with England or furnish Congress with the money.’” France was “to do so, until ‘all that the English now possess on the continent shall be conquered’ and the English fisheries be secured ‘to the United States and their allies.’”¹⁰

The treaty of amity and commerce and the treaty of alliance were signed at Paris on February 6, 1778. The treaty of amity and commerce, although signed at Paris, was not prepared there. The possibility of such a treaty had been before the Congress, and while it had “pitched” on France as a party to it, a plan of a general nature had been drafted which should serve as a basis for treaties of amity and commerce which the United States hoped to negotiate with a variety of powers. In working out this plan the Congress had adopted the expedient familiar to the legislatures of the colonies, which had the committee habit. Committees had been formed in those assemblies for general or specific treaties, and the work of the Congress, as the event proved, was to be done in committees. The secret committee for correspondence was appointed to look after foreign affairs of the incipient republic, and it was appropriately given the name of Committee for Foreign Affairs, on April 17, 1777. A

secretary of the Committee was appointed with "a salary of 70 dollars a month," who was to "take an oath, to be administered by the president, 'well and faithfully to execute the trust reposed in him, according to his best skill and judgment, and to disclose no matter, the knowledge of which shall be acquired in consequence of such his office, that he shall be directed to keep secret.'" ¹¹

The Secretary was no less a person than Thomas Paine, author of *The Crisis*, who failed to keep secret things pertaining to his office. For this and other reasons he was later dismissed. In the meantime, he considered himself as Secretary for Foreign Affairs, and his appointment was a step in that direction. The supposition that the committee was to be in charge of foreign affairs is not borne out by the facts. Its chief function appears to have been to furnish agents of the Government abroad with the happenings in America. It did not, indeed it could not, formulate a consistent and continuous policy. It had no initiative; it acted merely as the agent of Congress, and according to direction; its members changed to such an extent that it was superseded by a Department of Foreign Affairs in 1781. As questions arose, special committees were appointed, and the committee system was continued without, however, the continuation of committees.

A committee was appointed to prepare a model plan of treaties with foreign powers, on June 11, 1776. Its report is in the handwriting of John Adams, one of its members. As originally drafted, the names of the contracting parties were left out and their places were supplied by letters of the alphabet. In the report as printed the names of the contracting parties were inserted:

“Lewis the Sixteenth, the most Christian King, his Heirs and Successors, and the united States of America.”¹²

While apparently a completed document, it was not intended to stand alone. Instructions were prepared by James Wilson, debated by paragraphs and, as amended, were adopted September 24, 1776. The two documents, therefore, should be considered together—the proposed treaty showing the principles which the Congress thought at the time should be adopted as a permanent policy, and the instructions which manifest an eagerness to conclude a treaty of amity and commerce with France, even at the sacrifice of the plan which had been prepared for presentation to that country and, indeed, to all countries.

An inspection of the instructions shows that the proposed articles fall into two classes: those to be insisted upon—very few in number—and those to be pressed, but not to the point of interfering with the negotiation of the treaty. Thus the first two articles of the draft, providing for the rights and privileges of navigation and commerce, were to be wholly omitted unless the most-favoured treatment accorded to any nation was to be obtained. The fourth, providing for protection to be accorded American ships by French men-of-war, was to be insisted upon. This is the entire list of indispensable conditions. The others were indeed to be presented and pressed, but waived rather than that the negotiation of the treaty be jeopardized. One of this latter class should be mentioned. In the eighth article, the American agent was to bind the United States not to assist Great Britain if war should be declared by that country against France because of the treaty. This seemed to the members of

the Congress to be a small return for a large benefit; therefore, the agent was to propose, among other things, that the United States would engage never to be subject to Great Britain nor to grant any privileges to that country which it would not accord to France. There were four paragraphs appended to the instructions for the treaties which should be quoted. They are so self-explanatory as to need no comment:

“You will solicit the Court of France for an immediate Supply of twenty or thirty thousand Muskets and Bayonets, and a large Supply of Ammunition and brass Field Pieces, to be sent under Convoy by France. The United States engage for the Payment of the Arms, Artillery and Ammunition, and to indemnify France for the Expence of the Convoy.

“Engage a few good Engineers in the Service of the United States.

“It is highly probable that France means not to let the United States sink in the present Contest. But as the Difficulty of obtaining true Accounts of our Condition may cause an Opinion to be entertained that we are able to support the War on our own Strength and Resources longer than, in fact, we can do, it will be proper for you to press for the immediate and explicit declaration of France in our Favour, upon a Suggestion that a Re-union with Great Britain may be the Consequence of a delay.

“Should Spain be disinclined to our Cause, from an Apprehension of Danger to his Dominions in South America, you are empowered to give the strongest Assurances, that that Crown will receive no Moles-

tation from the United States, in the Possession of those Territories.’”¹³

A comparison of the “plan of 1776” with the completed treaty of commerce and amity of 1778 with France¹⁴ shows the almost unbelievable extent to which its provisions were adopted—unbelievable unless it was the purpose of France to conclude a treaty with the United States upon a plane of absolute equality, such as the United States would be willing to conclude at some future day when it should be a powerful nation, and which even then it would wish to preserve as the standard of conduct between the two countries.

The treaty ends with a two-fold guaranty: an engagement on the part of France to guarantee the possessions of the United States in case the conclusion of the treaty of amity and commerce should not cause Great Britain to declare war against France. If, on the other hand, war should break out, France was to guarantee the possessions of the United States as stated in the treaty of peace, and the United States was to guarantee the “present possessions” of France in North America, as well as those which might be acquired in the treaty of peace. At the same time France renounced forever the possession of the Bermuda islands, as well as any part of the continent of North America which belonged to the British crown, or to the United States before 1763, or by virtue of the treaty of Paris of 1763.

Great Britain was officially informed of the treaty of amity and commerce on March 13, 1778. Lord Stormont, the British ambassador, was ordered to withdraw from Paris, and the French ambassador, the Duc de Noailles,

left London on March 19. The two countries drifted rapidly into a state of war, and the treaty of alliance concluded with the United States, providing for such an eventuality, thus came into force and effect. France was to be no longer surreptitiously a base of supplies; American privateers with their captures were no longer to infest French waters and ports in violation, real or alleged, of neutrality. Officers desiring to serve in America no longer had to be encouraged to go secretly while officially obstacles were placed in their way. All these things would now be done openly. The fleet of France, which in the past months had been overhauled, was in condition to put to sea. On its westward cruise toward America, on the 17th of June, 1778, the first overt act of hostility occurred in an action with British naval forces. The allied cause had challenged the command of the seas, and thanks to the alliance and the power of the regenerated French navy the French expeditionary forces were able to reach America and to render effective that independence which the treaty of amity and commerce had already recognized.

The first chapter in American diplomacy was now written. A commercial treaty had been negotiated, a plan had been laid for future treaties, the first alliance had been contracted and plans were actively on foot for other supporting alliances.

In order to bring about an alliance with Spain, Vergennes was obliged to offer advantages of a material kind—to persuade the Spanish authorities that the war against England would not prejudice Spanish possessions in America, and that participation in the war would really be for Spain's present and future interest.

A successful war might result in the reacquisition of the Floridas, which had been ceded to Great Britain in 1763. In the vast territory between the Appalachian and the Mississippi, Spain might be allowed a free hand, as it could be contended that the British proclamation of 1763 withholding them from colonial settlements bounded the British colonies on the west by that mountain range. Minorca, likewise lost by Spain, might be recovered; and a joint venture of France and Spain might dispossess Great Britain of Gibraltar and once again attach the rock firmly to Spanish soil. These were matters of moment to Spain, and in which France claimed no present or future interest. An acceptance of these terms would enable Spain to enter the war without raising the question of insurrection in its trans-Atlantic colonies; but Spain would of course insist that the war should be continued until these, or at least Gibraltar, had been acquired. These matters could be arranged by treaty, and they were, by the Convention of Aranjuez of April 12, 1779.¹⁵ At first the *amour propre* of Spain stood in the way of this, or of any other treaty; for Spain was conscious that it was playing at best but a secondary rôle in the entire transaction. It therefore wished to enter the war upon a cause of its own, separate and distinct from that of France. Precious moments were taken up with projects of mediation, which France was obliged to accept but which Great Britain rejected. Later Great Britain thought it worth while to reopen the question, much to Vergennes' chagrin. But Floridablanca apparently knew his game. He proposed to end hostilities by a truce between Great Britain and its rebellious colonies, with a withdrawal of troops and treatment of the colonies as if they were

independent. The proposal was unacceptable. Thereupon Spain affected to believe honour required its participation in the war, which it accordingly entered.

There is little, if anything, in this convention which can properly be considered as contrary to the obligations undertaken by France in the treaty of alliance with the United States.¹⁶ It is possible to contend that the ninth article, obliging France and Spain to continue the war until Gibraltar or Dunkirk should be acquired, might result in its continuation after Great Britain was willing to recognize the independence of the United States, and the interests of the United States be subordinated to those of Spain, if Gibraltar were not then in the possession of Spain. As a matter of fact, the war was not prolonged in order to secure Gibraltar—Minorca and the Floridas were accepted instead, in order that peace might be concluded, and evidence appears to be lacking that France believed or intended that the convention of Aranjuez should interfere with its obligations to the United States.

It is customary to criticize France for the long, protracted negotiations with Spain in order to induce that power to enter the war against Great Britain; and it appears to be the common opinion that the services rendered by Spain were not commensurate with the hopes, indeed the expectations, which might justly have been formed as to her influence. Yet there is something to be said for the other side, and it was said repeatedly by Vergennes, who felt that France could not successfully conduct the war without the support of Spain, and that the conjunction of the Spanish fleet with that of France was necessary if the enemies of England were to have that control of the seas essential

to their undertaking. This was also the view of no less a person than General Washington. "If the Spaniards," he said, under date of October 4, 1778, "would but join their fleets to France and commence hostilities, my doubts would all subside. Without it I fear the British navy has it too much in its power to counteract the schemes of France."¹⁷ The statesmen of the American Revolution were willing to compensate Spain to the west, if that power would enter the war. "Our empire," said Jay, then President of Congress, "is already too great to be well governed, and its Constitution is inconsistent with the passion for conquest."¹⁸

It is not improbable that the presence at Yorktown of the French fleet under Admiral De Grasse was facilitated, if not rendered possible, by the addition of the Spanish navy.¹⁹ In any event, the acquisition of the Floridas by Spain in consequence of the war with Great Britain rendered their possession by the United States a question of time and consolidated our southern frontier, if it did not pave the way to the purchase of Louisiana, to the west of the Mississippi.

In July, 1779, Spain declared itself in a state of war with Great Britain, and the policy of isolation of Great Britain began. To the Congress it seemed that the moment had come for a minister in Spain, and John Jay, of New York, was chosen for the post.

Jay's purpose was two-fold: to secure recognition of the independence of the United States by Spain by an actual alliance, and to get a loan of money. During the thirty months of his commission, he was never officially received by the Spanish Court. He was obliged to deal mostly with go-betweens, and although he was able to

obtain some moneys, necessarily contributed secretly, he left Spain in the end, as was natural, with a deep resentment against it; a distrust of the policy of the younger branch of the Bourbon house, which was also natural, and a feeling that the policy of the older branch of that royal line would require watching—a very human view, under the circumstances.

The statesmen of the Revolution were anxious to come to terms with Spain. They wanted an unclouded title to the western lands, and the navigation of the Mississippi to the Gulf of Mexico. Therefore, the Congress at various times offered inducements to have Spain accede to the treaties of amity and commerce, and alliance, concluded with France.

If Spain should acquire the Floridas, the United States would guarantee their possession, provided only the Mississippi should be free to the sea; a free port, however, below the 31° of latitude was to be obtained, if possible. Later (February 15, 1781), Jay was instructed to renounce the free navigation and the port, provided the navigation above the 31° of latitude should be acknowledged and guaranteed. This instruction was distasteful to Jay, and he properly safeguarded the interest of his country by proposing that if the relinquishment were not then accepted, the proposal should not in the future be held against the United States. Nothing came of this proposal, and Jay shook the dust of Spain from his weary feet in the summer of 1782, in order to join Franklin in Paris, at that gentleman's request, believing that the negotiations with Spain would be renewed in Paris, with the Spanish ambassador to the Court of Louis XVI. They were not renewed in France.

CHAPTER III

THE ARMED NEUTRALITY OF 1780

THE policy of Vergennes was not only to bring Spain into the war against Great Britain, but to isolate that country from its continental neighbors when he might not be able to persuade one or more of them openly to enter the ranks of Britain's enemies. The modification of French maritime law by the regulations of July 26, 1778, made it possible for France to appear in the favourable rôle of defender of neutral rights menaced by the unconciliatory attitude of Great Britain. British practice bore hard on neutrals, and if it were allowed to prevail they would find themselves unable to continue their peaceful activities, and their native products would be deprived of a favourable war market. This was the case especially with the Netherlands and the Scandinavian nations, and in a lesser degree with Russia, which nations (especially Russia) are usually credited with bringing about an armed neutrality in order to maintain their rights by force where persuasion had failed.

Without questioning the straightforwardness of the attitude of the northern maritime nations, particularly that of Denmark, and without seeking to withdraw from Catherine the Great the credit which may be due that august sovereign for mothering the movement, the truth seems to be that Vergennes gathered them into the diplomatic net which he spread round them in the

trying months following the outbreak of the war with Great Britain.

M. Doniol, who has studied the American Revolution not only as it affected France and the United States, but Europe as well, is strongly of the opinion that Vergennes conceived a union of the neutral nations in order to curb the maritime power of England. He perceived, according to this authority, that the Netherlands, Sweden, Denmark and Russia could, by their geographical situation, be drawn together; that the freedom of the seas was a doctrine at hand which Catherine could utilize in order to protect Russian interests against British action inconsistent with the right of each and every power to the sea.

The result was the adherence of the neutral maritime states of northern Europe, including, of course, France and her ally Spain, to the principles of the Armed Neutrality of 1780. Great Britain naturally opposed it, because it condemned British precedent and actual practice. By this combination Great Britain found herself further isolated.

The principles of the Armed Neutrality, destined to be recognized at a later date as an integral part of international law, and which in 1780 had the vigorous support of the neutral and smaller European states, were four: first, freedom to trade with enemy ports, and indeed to engage in their coastal trade; second, free ships were to make free goods, with the exception of contraband; third, a blockade to be binding was to be effective; and fourth, neutral ships should not be stopped "without a material and well-grounded cause," and in case of improper seizure full indemnity was to be accorded.

Great Britain was opposed to every one of these. France on beginning the war with Great Britain had proclaimed the doctrine that free ships should make free goods; Spain also accepted the more "liberal" practices. These two belligerents thus found themselves associated with the neutrals. What was the attitude of the United States? It can be divined without stating it. Its agents in Europe had vainly sought to be admitted to every court, and had failed to get recognition. Here was a possible opportunity of getting in by the side-door. An adherence by the United States as a contracting party to the Armed Neutrality would be in effect, if not in form, an acknowledgment of their independence.²⁰

On October 5, 1780, Congress resolved that instructions be given to the "commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias, on the rights of neutral vessels"; and American plenipotentiaries were empowered "to accede to such regulations" as should be adopted by a congress which was expected to assemble in pursuance of the invitation of the Russian Empress. That there might be no doubt about the action of the Congress, copies were transmitted to the American ministers "at foreign courts," and to the minister plenipotentiary of France at Philadelphia. John Adams, accredited to the Netherlands, communicated the resolution of Congress to the States General, March 8, 1781. In the course of his memorial he felt himself justified in saying: "As the American Revolution furnished the occasion of a reformation in the maritime law of nations of so much importance to a free communication among mankind by sea, the

subscriber hopes it may not be thought improper that the United States should become parties to it, entitled to its benefits, and subjected to its duties." And he added that he "should esteem it one of the most fortunate events of his life if this proposition should meet with the approbation of your high mightinesses and the other powers who are parties to the neutral confederacy, and he be admitted as the instrument of pledging the faith of the United States to the observance of regulations which do so much honor to the present age."

Robert R. Livingston, then Secretary for Foreign Affairs, after informing (March 2, 1782) Francis Dana, unrecognized minister to Russia, that the United States was conforming its actions to the principles of the Armed Neutrality although Great Britain had refused to do so, said: "But interested considerations have less weight with us than those immutable laws of justice which make the basis of these regulations, and these States can not but hope that the neutral powers will sooner or later dare to execute what they have so wisely projected." Dana was instructed to offer formal adherence to the Russo-Danish treaty incorporating the principles of the Armed Neutrality, as a means of securing, *ipso facto*, Russian recognition of the United States. But he could secure no invitation to become party to the treaty. The chance of securing Russian recognition by such means proved to be nil. The treaty of peace concluded with Great Britain in 1783 released the United States from the necessity of prosecuting the matter further.²¹

Although the United States was unable to adhere to the Armed Neutrality in order to secure the recognition

of its independence by the parties to that armed league, the Armed Neutrality itself was a powerful instrument in effecting the isolation of Great Britain from the maritime and trading nations of the world. This isolation was increased by the accession of the Netherlands to the Armed Neutrality, and by the irregular negotiations of subordinate officials of that same power for a treaty of amity and commerce with the United States, by virtue of which transactions Great Britain took occasion to declare war on the Netherlands.²² The desire of the Dutch had been to remain neutral, but as a commercial nation its commerce suffered at the hands of Great Britain. Then, too, it had treaties with Great Britain concluded in 1674 and 1715, under which that country claimed that the Netherlands should render it aid. This the United Provinces were unwilling to do. When it became known that the Netherlands were to accede to the Armed Neutrality, the British Ministry preferred to have the Netherlands as an open enemy, whose ships would be subject to capture, than as a neutral bringing foodstuffs and naval stores to France and French colonies under cover of the Armed Neutrality.

The British Minister at The Hague, Sir Joseph Yorke, was not of a conciliatory nature, and his notes on various questions concerning the relations of the two countries were not calculated to improve matters. He soon took advantage of a pretext which happened conveniently for the purposes of British diplomacy. On November 16, 1780, he presented a memorandum before the States General in which he said, in part: "His Majesty has had for some time indications without number of the dangerous designs of an *unbridled cabal*. But the papers of Mr. Lau-

rens, who calls himself a President of a pretended Congress, have made a discovery of a conspiracy without example in the annals of the republic. It appears by these papers that the gentlemen of Amsterdam have commenced a clandestine correspondence with the rebels of America, from the month of August, 1778, and that there were instructions and full powers given by them, relative to the conclusion of an indissoluble Treaty of Amity with these rebels, subjects of a sovereign to whom the republic is bound by engagements the most strict." The more he wrote the hotter he grew. He demanded "a formal disavowal of a conduct so irregular, not less contrary to your engagements, the most sacred, than to the fundamental laws of the Batavian Constitution. The King demands also a prompt satisfaction, proportioned to the offense, and an exemplary punishment of the Pensionary. . . . and of his accomplices, as disturbers of the public peace and violators of the law of nations." The States General made the matter worse by promising an investigation as soon as the laws would permit. The demand was renewed, with the intimation that if the States General did not punish the offenders, His Britannic Majesty would take charge of it itself. After this outburst, his presence would have been undesirable in any country where diplomatic propriety was a requisite, but before writing this latter note, he had been ordered by his government to leave The Hague. The armed neutrals, it should be observed, did not come to the aid of the Netherlands, now face to face with the British navy. They chose to view the war as one caused by the meddling of the Hollanders with British colonial affairs.

Therefore at the beginning of 1781, Holland and Great Britain were virtually at war. On April 22, 1782, after Yorktown and the beginning of Dr. Franklin's peace negotiations with Great Britain, the States General declared Mr. Adams "agreeable to their High Mightinesses, and that he shall be acknowledged in quality of Minister Plenipotentiary,' and on the same day he is officially received by the Stadtholder."

One of the purposes of the United States had thus been accomplished—the independence of the United States was acknowledged by another European state. Adams brought about the consummation of the second purpose on the following day, by his proposal to negotiate a treaty of amity and commerce, which he signed, October 8, 1782, and likewise in the third point of American policy, in opening "a loan for five millions of guilders." It was to be the last treaty negotiated by the United States before its independence was recognized in the most formal manner by the mother country.

CHAPTER IV

END OF THE WAR; THE AMERICAN PEACE PROGRAM

THE entrance of Spain had given to the allies the hope of preponderance at sea.

Rochambeau arrived in America in 1780 and placed himself and his troops under the command of Washington. France was anxious that a blow should be struck in 1781, in order to make the campaign of that year decisive. The French fleet in American waters was strengthened, and it was hoped that arrangements could be made for combined action by land and sea. Washington's plan was to besiege and take New York; the French on the contrary preferred Yorktown. In any event, De Grasse with his fleet in the West Indies was to repair to North American waters. He arrived off the Chesapeake Bay, August 31, in time to prevent a British fleet from relieving Cornwallis. The Franco-American army advanced rapidly southward; Cornwallis was cooped up on the Yorktown peninsula. On the 19th of October 1781, he surrendered to the joint Franco-American forces under the command of Washington.

News of the surrender reached London November 25, 1781. Parliament met two days later, on which occasion the speech from the throne used these portentous words: "It is with great concern that I inform you, that the events of war have been very unfortunate to my arms in Virginia, and have ended in the loss of my forces in that province."²³ Nevertheless the Government

obstinately planned to continue the war as vigorously as possible. The Fates—or the Opposition—had, however, decreed otherwise. On February 27, 1782, a resolution was carried in the House of Commons, declaring the ministers who were in favour of continuing the war to be enemies of their country. This was the first step. The second step was taken on March 8th—a motion for censure, which narrowly failed of adoption. The third step was taken a week later, when a vote of confidence was lost, indeed, by a majority of nine, but notice was given that it would be renewed on the 20th of the month. The hammering of the Opposition proved effective. On the 20th of March, 1782, Lord North resigned before the last motion could be renewed, that he might not find himself in a minority. True to form, King George is reported to have “parted with him rudely without thanking him, adding, ‘Remember, my lord, that it is you who desert me, not I you.’”

The way was now open to peace without question of desertion. The King asked Lord Shelburne, a follower of Chatham and an opponent of ministerial measures, to accept the premiership. He refused and advised the disconsolate monarch to entrust the formation of the Ministry to the Marquis of Rockingham, an open and consistent advocate of independence, who as Prime Minister many years before had repealed the Stamp Act (March 18, 1766). In this Ministry Lord Shelburne was Secretary for the Home Department, Irish affairs and the Colonies, and Charles James Fox, an advocate of independence to such a degree that he had adopted Washington’s colours for the Whig Party, was appointed Secretary for Foreign Affairs.

The eighth article of the treaty of alliance with France provided that "neither of the two parties shall conclude either truce or peace with Great Britain without the formal consent of the other first obtained; and they mutually engage not to lay down their arms until the independence of the United States shall have been formally or tacitly assured by the treaty or treaties that shall terminate the war."

It is evident, therefore, that the parties to the treaty preferred a peace but nevertheless contemplated the possibility of a truce, provided only the independence of the United States were formally or tacitly assured. In the negotiations preceding Spain's entry into the war a truce was proposed. Vergennes, as a prudent man, had consulted Dr. Franklin, and finding him favorable under the circumstances to a truce which appeared to be equivalent to granting independence, he had directed Gérard, the French Minister to the United States, to consult the Congress and obtain its consent to a truce instead of to a formal treaty of peace, if circumstances should make the former more feasible than the latter.

Gérard was unsuccessful in his endeavours, for the Congress placed itself squarely on the platform of independence and extended the boundaries of the United States to the Mississippi, although Gérard wanted the question of title to western territory left open for negotiation. On the question of independence the peace commissioner of the United States was instructed "to make it a preliminary article to any negotiation that Great Britain shall agree to treat with the United States as Sovereign, free and Independent."

The boundaries desired were: the boundary of Can-

ada as before the Quebec Act; on the east, the St. John River "from its source to its mouth in the Bay of Fundy" including "all Islands within twenty leagues of any part of the shores of the United States"; on the south, the northern boundary of the Floridas, 31° north latitude from the Mississippi due east to the Apalachicola, and thence to the Atlantic by the line of the St. Mary's River. The Congress considered it of the utmost importance that Canada and Nova Scotia also should be ceded, and that "their equal common right to the Fisheries should be guarantied to them"; yet these matters were not to be made an ultimatum.

In instructions of the same date given to the commissioner for negotiating peace a treaty of commerce with Great Britain concerning the common right of fishing in British North American waters was insisted upon. The inshore fisheries were to be obtained, if possible, and the right to use the shores of Nova Scotia. The commissioner was directed, in the absence of specific instructions, to measure his conduct by the alliance with France and the advice of "our allies."

In the next set of instructions, of October 18, 1780, the proposed truce was considered. This time, however, Spain was not the mediator, as it was before the war with Great Britain. The Empress of Russia, Catherine the Great, had put herself at the head of the League of Armed Neutrals, and was desirous of causing the belligerents to accept the then new-fangled rules of maritime warfare which today are deeply embedded in the law and practice of nations. The Holy Roman Emperor, Joseph II, was anxious, as Spain had been in the preceding year, to resort to mediation, that he might better

his prestige, somewhat damaged in the bloodless war of the Bavarian succession of 1779. The situation of Great Britain was such at the time as to incline it toward mediation, and as Marie Antoinette, the Queen of France, was the sister of Joseph II, and Austria's friendship was valuable to France, Vergennes himself did not dare openly to oppose mediation. Congress, therefore, found itself face to face with the question of peace terms. This time the influence of the French minister, now the Chevalier de la Luzerne, was successful. On October 18, 1780, Congress accepted the idea of a truce for such a long or indefinite period as to be in effect an acknowledgment of the independence and sovereignty of the United States, "provided, the removal of the British land and naval armaments from the United States be a condition of it." "A short truce" however, would be, in the opinion of Congress, "highly dangerous to these United States." Any truce was to be "with the concurrence" of France. The resolution also provided that there were to be no concessions for the re-admission of Loyalists or for the recovery of their property unless Great Britain should agree to make "full compensation for all the wanton destruction which the subjects of that nation have committed on the property of the citizens of the United States."

On June 15, 1781,²⁴ the Congress, at the request of the French minister, reconsidered the matter of peace and instructions to the American negotiators. The mediation proposed by the Empress of Russia and the Emperor of Germany was formally accepted, and while the treaty of peace need not expressly acknowledge the independence and sovereignty of the thirteen

states, it must "effectually" secure it. The treaties with France were to be "left in their full force and validity." The instructions of August 14, 1779, and of October 18, 1780, were also formally confirmed, but the Congress thought it "unsafe, at this distance," to bind the peace commissioners other than to the effectual independence of the thirteen states and the preservation of the French treaties; in other respects they were free to act as "the state of the belligerent and disposition of the mediating powers may require." In so doing, they were empowered to make "the most candid and confidential communications upon all subjects to the ministers of our generous ally, the King of France; to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence; and ultimately to govern yourselves by their advice and opinion, endeavouring in your whole conduct to make them sensible how much we rely on his Majesty's influence for effectual support in every thing that may be necessary to the present security, or future prosperity, of the United States of America." A formal peace, it is to be observed, was to be preferred, but the American representatives were permitted "to agree to a truce, or to make such other concessions as may not affect the substance of what we contend for; and provided that Great Britain be not left in possession of any part of the thirteen United States."

Secretary Livingston wrote a letter of instructions to Dr. Franklin on January 7, 1782,²⁵ for the guidance of the commissioners in the peace negotiations which were now imminent. On the matter of boundaries, Secretary Livingston referred to the previous instruc-

tions of Congress, thus confirming the claim of the United States to the territory south of Canada and to the north of the Floridas as far west as the Mississippi. On the fisheries the Secretary spoke in no uncertain terms, insisting upon the right of Americans to take fish off the banks of Newfoundland, and in all other places, "provided we do not come within such distance of the coast of other powers as the law of nations allows them to appropriate," although in the case of Great Britain, he stated that, "strictly speaking," the Americans should be permitted to fish in common with the British in North American waters.

He warned that Great Britain might endeavour to secure compensation for the Loyalists and for their property which had been confiscated because of their adherence to the crown. For a variety of reasons Secretary Livingston was opposed to stipulations in their behalf, saying, "There can be little doubt that every society may rightfully banish from among them those who aim at its subversion and forfeit the property which they can only be entitled to by the laws and under the protection of the society which they attempt to destroy."

On the other hand, he was in favour of compensation from Great Britain "for the injuries wantonly done by the enemy." This, he assured the commissioners, was to be "anxiously desired."

Finally the treaty was to contain stipulations for the return "of all records and other papers of a public and private nature" carried off by the enemy.

During the course of the negotiations, on the 31st of May, 1782,²⁶ Congress directed the Secretary of Foreign Affairs to inform the French minister "that the signal

proofs of inviolable constancy to his engagements, given by his Most Christian Majesty in the answer to the attempts of the British court to seduce him into a separate peace, had been received by Congress with the sentiments with which it ought naturally to inspire faithful and affectionate allies"; and Congress again pledged itself, as stated in the resolution, not to "depart from the measures which they have heretofore taken for preventing delay, and for conducting the discussions of them, in confidence, and in concert with his Most Christian Majesty."

On August 8, 1782, while, as will presently be seen, the form of recognition to be given to the United States was engaging the attention of Messrs. Franklin and Jay, a motion²⁷ was made in the Congress, but without success, to appoint a committee "to revise and consider the instructions given to our ministers for negotiating a peace with Great Britain and report what alterations ought to be made therein."

It was feared in France that the Americans might not be so firm. The resolution introduced on August 8 failed, a fact which gives more significance to the resolution adopted by Congress October 4, 1782.²⁸ This resolution is very material to present purposes as it distinctly repudiated the idea of a separate peace which Great Britain was agitating. It was "resolved, unanimously, that Congress are sincerely desirous of an honorable and permanent peace; that as the only means of obtaining it, they will inviolably adhere to the treaty of alliance with his Most Christian Majesty," and it was ordered "that the Honorable the minister plenipotentiary of France be furnished with a copy of the above act, and that copies be

transmitted to the ministers of these states at foreign courts, and that in the meantime it be published."

It is abundantly evident, therefore, that in advance of negotiations for peace, and during the negotiations in anticipation of a truce, or when after its rejection direct negotiations were in progress, Congress meant that the independence of the United States should be secured according to certain terms set forth in its former resolutions and acts; that all thought of a peace separate and distinct from France was excluded, and that the peace itself was to be made in close and confidential co-operation with France, our one and only ally.

To make a peace, it was necessary to have negotiators, for although Congress could prescribe terms, it could not, across the water, deal directly with the representatives of the British Government, and it would not deal separately from France with Sir Guy Carleton and Admiral Digby, representatives of Great Britain in the United States, who had been authorized to that end.

At the instance of Luzerne, a joint commission was appointed to control Adams, originally sole peace plenipotentiary whose "testiness," manifested on more than one occasion in his relations with Vergennes, had made amicable relations between these men difficult, if not well-nigh impossible.

On June 11, 1781,²⁹ the Congress "*Resolved*, That two persons be joined to Mr. J. Adams in negotiating a peace between these United States and Great Britain," and the following names were put in nomination: John Jay, John Laurens, Thomas Jefferson, Benjamin Franklin, Joseph Reed and William Carmichael. Two days later John Jay was elected and the consideration

of the third person postponed until the next day. On the 14th, Congress proceeded to the election, and, as the official report states, "the ballots being taken: the honourable Benjamin Franklin, the honourable Henry Laurens, and the honourable Thomas Jefferson, were elected."³⁰

John Witherspoon, President of Princeton, and then a member of the Continental Congress, informs us placidly that the commission was raised to five in order to have different parts "of the continent" represented, thus removing suspicion or fear that the interests of one part would be sacrificed to secure that of another.³¹

Franklin, Jay and Adams—to mention them in the order of their participation in the negotiations—alone represented the United States. Laurens was taken prisoner by the British on the ocean, in 1780, and clapped into the Tower of London on a charge of treason. He was ultimately liberated in order to permit him to take part in the negotiations. He arrived in Paris only two days before the treaty was signed and thus played a very small part. Jefferson was Governor of Virginia at the time and refused to serve as commissioner. Later he consented to do so, but the treaty was signed before he could embark upon his mission.

The five gentlemen were commissioned on June 15, 1781. They, or a majority of them, or in case of death or inability of the others to act, any one of them was empowered to negotiate in behalf of the United States. The terms of a treaty which would meet with the approval of Congress were prescribed by that body and were known to each of the prospective commissioners plenipotentiary; and the relations which Congress

wished the American commissioners to sustain toward France and with the French representatives were defined and likewise known to the commissioners. The only thing unknown and unmeasured was the terms which Great Britain would be willing to accept.

CHAPTER V

THE TREATY OF PEACE AND INDEPENDENCE

I

WHEN the Rockingham Administration took office, it was with the distinct understanding that the independence of the American states should be recognized. There was, however, unfortunately, a difference of opinion as to which branch of the Government should be charged with the negotiations. If independence was to be recognized by an act of Parliament, the terms of the treaty between the two countries would fall within the province of Fox, Secretary for Foreign Affairs. If, on the contrary, independence—which all were agreed to grant—should be contained in the treaty as the result of negotiations, then Shelburne, Secretary for Home and Colonial Affairs, would be properly in charge of the negotiations. Either Secretary would have been acceptable to the American commissioners, inasmuch as both had been friends of America before and during the war, and Fox, at least, was now in favour of unequivocal independence.

There was a danger in immediate recognition of independence by act of Parliament. If the proclamation of independence were a unilateral, unconditional act of Great Britain—whether by act of Parliament or by letters patent—it could not be withdrawn by that country.³² If, on the other hand, independence, admitted in

principle, was to be the result of negotiation, it might be made a consideration for terms which the American states would not otherwise have accepted. This was Shelburne's plan. The grant of independence in advance of negotiations could be looked upon as an unnecessary affront to the King; whereas, making independence the price of peace, or the result of negotiation, would, outwardly at least, save the royal dignity. It certainly made it easier for His Majesty to make a virtue of necessity. Therefore Shelburne's plan prevailed.

The negotiations between Great Britain and the United States for the recognition of their independence began in a way which justified Dr. Franklin's happy phrase that "Great Affairs sometimes take their rise from small Circumstances."

An English nobleman having spent the winter at Nice, Madame Brillon, "My good Friend and Neighbour," as Dr. Franklin calls her in his "Journal of the Negotiations for Peace with Great Britain," suggested that he should "call in his Return to England, and drink Tea with us at Passy."³³ His lordship did so on the 22d of March, 1782, and after talking of their common friends at Nice, and of matters in England, Lord Cholmondeley—for such was the nobleman's name—remarked that Shelburne had a great regard for Dr. Franklin; that he was sure his lordship would be glad to hear from him, and that if the Doctor would like to write a line, he, Cholmondeley, would be glad to carry it to its destination.

Dr. Franklin wrote a letter expressing pleasure at the renewal of their friendly relations interrupted by the war and stated that the disposition of England in fa-

vour of peace, as evidenced by the late revolutions in Parliament, would have "good Effects." It would, he said, "tend to produce a *General Peace*, which I am sure your Lp, with all good Men, desires, which I wish to see before I die, and to which I shall, with infinite Pleasure, contribute every thing in my Power." The Ministry had just fallen, and Franklin did not know that Shelburne was a Secretary of State in the new Cabinet; but he had a habit of taking time by the forelock.

Receiving this letter after his assumption of office and being desirous of concluding peace, Shelburne eagerly acknowledged Franklin's missive.³⁴ His lordship was courteous to a fault, saying that he "had a high opinion of the Compass of your Mind, and of your Foresight"; that he had often been "beholden to both," and that he would be glad to be so again, so far as would be compatible with Franklin's situation.

Coming now to the point which the correspondents really had in mind, Shelburne said that, discovering the same disposition in Franklin, he was sending to him one Richard Oswald, with whom he had been longer acquainted than with Franklin. "I believe him," he said, "an Honest Man, and, after consulting some of our common Friends, I have thought him the fittest for the purpose." Then directing a shaft at Franklin's known weakness, he added: "He is a pacifical man, and conversant in those negotiations, which are most Interesting to Mankind," because of which, Shelburne preferred him to "our Speculative Friends, or to any person of higher Rank." In addition Franklin was informed that Oswald was "fully appriz'd of my Mind, and you may give full credit to every thing he assures you of." "At the

same time," he added, and he was now speaking as Secretary, "if any other channel occurs to you, I am ready to embrace it." In other words, Dr. Franklin was not merely to negotiate, but he was to choose the British plenipotentiary, if he desired to do so. And his lordship concluded his overture for peace—for such it was—with two phrases which no doubt pleased Franklin and which were in the interest of the negotiations: "I have few or no Secrets," he said; and he added, "I wish to retain the same Simplicity and Good Faith, which subsisted between us in Transactions of less Importance."

Dr. Franklin learned from Oswald that Great Britain sincerely wanted peace; that the recognition of independence was accepted in principle; and that the war should not be continued to enable France to impose humiliating terms upon Great Britain. The Doctor on his part availed himself of the opportunity to inform Oswald courteously but firmly that the American states would treat only in concert with France, and that as his colleagues were not at Paris he could do nothing of importance in the affair. However, he suggested that they should meet Vergennes.

Franklin and Oswald met with Vergennes on April 17, at Versailles; and thus the negotiations began. The interview lasted an hour. As Oswald did not speak French, Rayneval, a subordinate in the French Foreign Office,—who was destined to figure largely in the negotiations,—interpreted.³⁵

Among other things of interest to Oswald, and hardly less so to Franklin, Vergennes stated that he could only treat with "the Concurrence of his Allies"; that he contemplated a general not a partial peace, and that if the

belligerents wished to end the war it would be better to negotiate at Paris, where the ambassador of Spain already was and whither the American commissioners could conveniently repair. If on the other hand mediation were to be preferred, the belligerents might treat at Vienna; but that Louis XVI would accept any place agreeable to the King of England.

France and the United States were evidently acting together and neither was willing at this time, it appeared, to separate from the other. Franklin and Vergennes more than intimated that the "first propositions" for a peace would naturally come from Great Britain. Franklin of course informed Shelburne of the interview which they had had with Vergennes, and, expressing his appreciation of Oswald, stated that he desired no other channel of communication.

Unable to learn Vergennes's views as to the terms of peace, Oswald procured something from Franklin, who was very desirous of ascertaining the views of Great Britain on the cession of Canada and Nova Scotia.³⁶ Indeed Franklin had already prepared a memorandum on the subject.

Franklin availed himself of a remark made by Oswald to the effect that France was wise to cede Canada to Great Britain, as by so doing the ties with the mother country and the American colonies were weakened and the way prepared for revolution, which Oswald had himself predicted. If Canada were to be retained by Great Britain, "Such a Situation," the Doctor adroitly said, "would necessarily oblige us to cultivate and strengthen our Union with France." With this discourse Oswald seemed to be "much struck," and, observing that Frank-

lin frequently looked at his notes, he desired to read them. After the proper delay permission was accorded, and, indeed, Oswald departed with a copy of them to be laid before Shelburne—assuring Franklin that he would do “his utmost to impress Lord Shelburne with them,” and that he would return the paper to Franklin’s hands. “We parted,” the Doctor stated, “exceeding good Friends, and he set out for London.”

No doubt Oswald was delighted to be the bearer of Franklin’s good opinion, which assured him of his appointment as negotiator; and Franklin could not be less pleased in that he had this early opportunity of getting his favourite project, the cession of Canada, before the British authorities with a recommendation on the part of the prospective negotiator. Franklin’s purpose was three-fold: (1) he wanted Canada because he knew its importance, and that its position would avoid border disputes between the two countries, which might develop into war; (2) the sale of the vacant lands in Canada would compensate the states for the losses sustained at the hands of the British; and (3) the sale of the vacant lands would likewise indemnify “the Royalists for the Confiscation of their Estates.” American sovereignty over Canada and Newfoundland, let the reader note at this point, would have also solved the whole fisheries problem.

Oswald’s report of his interviews in Paris convinced his government that independence would have to be granted. It was hoped that by making this concession of independence through France, the “vanity” of that country being flattered, better terms might be obtained.

The British Cabinet agreed on April 23, 1782 that

Oswald should return to Paris, and propose that city as the seat of the peace negotiations; that he should determine with Dr. Franklin the time for setting on foot negotiations for a general peace; that the particular points of the negotiation should be independence to the United States upon restoration of Great Britain to the position occupied by it under the treaty of 1763; and that Fox should appoint a representative to make a similar communication to Vergennes. The choice for the latter fell upon Thomas Grenville, son of that George Grenville of Stamp Act fame.

Oswald arrived at Paris on the 5th, and Grenville on the 7th of May. Both had received appropriate instructions from their Government. Oswald's return was in pursuance of the desire of Franklin to discuss further with him concerning the peace; and Grenville apparently understood from Fox that he was not merely to discuss with Vergennes and Franklin, but that he was to be in charge of the negotiations which might lead to a general European peace. The instructions to Oswald were dated April 28, 1783. He was informed that a British fleet was in the West Indies under Rodney, which it was expected, would give battle to De Grasse. As a matter of fact the fleets had already met on the 12th of that month, and in the encounter, famous in naval annals for Rodney's breaking of the line, the French fleet had been practically annihilated and De Grasse taken prisoner. "A blow or two at sea," Oswald was informed, "may decide a great deal." Even in anticipation much was decided. For example, Oswald was instructed to "Insist in the strongest manner, that if America is independent she must be so of the whole

world. No secret, tacit or ostensible connection with France. If the Negotiation breaks off, all our rights in America to stand as before."³⁷ In other words, America was to be separated from France, if not before, or during, at least after the negotiations, to such an extent that even a secret connection should not exist; and a definition was given of independence as the price of peace—for if the terms which Great Britain suggested were not accepted, and negotiations should terminate, the price not having been paid, peace would not exist. There was no doubt about this, because in the papers marked "Private, to be Burnt," Oswald was instructed to "tell Dr. Franklin that if this negotiation goes off, the war will be pushed with the utmost vigour." He was also to tell him "(candidly and confidentially) Lord Shelburne's position with the king." In other words, an inducement was held out to the Americans to negotiate with Shelburne rather than with Fox, thus separating the American from the French negotiations, with the assurance that anything agreed upon between Franklin and Oswald would be confirmed, because of Shelburne's standing with the King.

In the "Remarks on the Private Papers" three reasons were given against the cession of Canada. There were to be no reparations; there were to be no future wars, and, as regards the Loyalists, compensation for them was to be a *sine qua non*. In addition, compensation was expected for New York, Charleston and Savannah; and Penobscot, in Maine, was to be kept in British possession.

Grenville learned without difficulty Franklin's views. His purpose in obtaining them is evident from the ac-

count which he gave to Secretary Fox, under date of May 10. In the first place, America was free except for the treaties of commerce and alliance with France, and these two treaties "were such as any other nation was free to make with America"; in the second place, the American states were so "obliged to France" that these treaties must be preserved inviolable; and in the third place, Grenville learned that the independence of America was indeed "a great deal" but that Franklin did not see in its recognition "gratification enough for France." In addition, Spain was to be considered, and might want Gibraltar. On Franklin's saying, according to Grenville, "it was nothing to America who kept Gibraltar," that astute and enterprising young gentleman was enabled to convey the hope of his country "that things foreign to the quarrel would not be permitted to break off a treaty and lead America on in a war where she could find no interest."

In the interview of May 9 with Vergennes, Grenville learned, among other items of interest, that the recognition of independence would be no concession to France, inasmuch as the French Minister informed him that independence was a fact before it had been acknowledged by France.

The negotiations, however detailed, were informal, as neither of the Britons was duly commissioned. On May 17, Grenville called upon Franklin and told him that he had received "full Powers in form to treat for a Peace *with France and her allies.*" His eagerness had apparently run away with his judgment, because his powers merely mentioned France, although he said that his instructions included the allies. Therefore, he sent back for fuller

powers. The Americans were, in the view of Vergennes, to treat as independent states, and as such they were not to be subordinate to France. They might, therefore, treat for themselves. This view Vergennes had already expressed, April 9, 1782, to the French minister in America. "We are," he wrote, "and shall always be, disposed to consent that the American plenipotentiaries in Europe should treat according to their instructions directly and without our intervention with those of the Court of London, while we on our side shall treat in the same way, provided that the two negotiations continue at the same rate and that the two treaties shall be signed the same day and shall not be good the one without the other."³⁸

Franklin and Vergennes were not only on speaking, but on confidential terms, as becomes allies in a common cause. Doubtless he knew the views of Vergennes on this point, and when he proposed to Oswald, as he did, this method of procedure, he was acting in common accord with France.³⁹

Franklin had seen a copy of Grenville's powers at Versailles, on May 28, and Vergennes informed him that he would speak his mind freely to Grenville at the meeting which they were to have on May 30. "They want," said Vergennes to Franklin, "to treat with us for you. But this the King will not agree to. He thinks it not consistent with the Dignity of your State. You will treat for yourselves: And every one of the Powers at War with England will make its own Treaty. All that is necessary to be observ'd for our Common Security is, that the Treaties go hand in hand, and are sign'd all on the same day."⁴⁰

Grenville's fuller commission arrived on June 15, and was again faulty, authorizing him to treat with the King of France or his ministers and with "the Ministers of any other Prince or *State* whom it might concern." Franklin very properly objected that he did not represent a prince, and that he did not conceive that the thirteen American states could properly be included under the word "State." Grenville, as the representative of Fox, was desirous of discussing terms with all of the belligerents. Shelburne insisted upon handling the American affairs, and Oswald was then and thereafter his representative. Grenville's commission gave trouble, but that source of difficulty was soon to cease, upon Shelburne's appointment as Prime Minister, at the death of Lord Rockingham, on July 1, 1782.

Oswald's commission was to give trouble, after Shelburne became Prime Minister, and it was not until the end of September that an agreement was reached, satisfactory to the American commissioners. There was also a preliminary question to be settled—whether Oswald should be charged with the conduct of American negotiations. This was made to depend upon Franklin's opinion, for in this matter, as in many others, his lordship was anxious to satisfy the Doctor. Pleasing evidence of this is to be found in a note which Shelburne gave Oswald, in the course of an interview in London, in the latter part of May, and which Oswald, with the frankness characteristic in his conduct, communicated to Franklin. This note stated that "the *Enabling Act* is passing, with the Insertion of Commissioners recommended by Mr. Oswald; and on our part Commissioners will be named, or any Character given to Mr. Oswald

which Dr. Franklin and he may judge conducive to a final Settlement of Things between G[reat] B[ritain] and America; which Dr. Franklin very properly says, requires to be treated in a very different manner from the Peace Between G[reat] B[ritain] and France, who have been always at Enmity with each other.”⁴¹

II

In the interval between the passage of the enabling act and the furnishing of a satisfactory commission to Oswald, negotiations continued with Franklin, and, later, Jay, in their official capacities, on the one side, and Oswald in his private capacity, as the representative of Shelburne, on the other. In the early part of this period Franklin acted as sole commissioner. It was not until June 23 that Jay arrived in Paris, and he was ill for some weeks thereafter with an attack of influenza, which prevented him from taking an active part in the proceedings; indeed, Oswald did not meet Jay until he had received from Franklin certain sundry “hints or articles” which were to find their way into the preliminary, as well as the final treaty.⁴²

As it was the understanding of Vergennes and Franklin that France and the United States should treat separately, although in concert; and as this method for obvious reasons was agreeable to Great Britain, there was every reason for, and none opposed to, the discussion of the main features of the treaty between Franklin and Oswald, provided that he was acceptable to the Doctor. As he was, in the highest degree, the conversations were continued between them both before and after Jay’s arrival.

The question of the commission would necessarily need to be postponed until an act of Parliament authorized the Ministry to treat with "the rebels." It was, of course, the desire of each of the commissioners to learn the views of the other, and to receive a proposal. The views of Franklin were broad and simple; they included good faith to France and reconciliation with Great Britain, and in all of his conversations with Oswald he urged terms which were calculated in his opinion to brush aside the differences and allow the two branches of the English-speaking peoples to begin where they had left off. Because of this, he was anxious to have something of a conciliatory nature come from Great Britain without seeming pressure from the American negotiators. Franklin felt that a proposal in the nature of reparation for wanton injury for which Great Britain should be responsible would go far to restore friendly relations. The truth is that Great Britain wanted to offer nothing but independence, or rather, a recognition of it, for independence was a fact. But the form in which the recognition was to be given seemed to be of great importance to Great Britain, as it was to Jay. To Franklin, a man of affairs, substance was everything, and form a mere incident or matter of expression. The "substance," Franklin himself stated from time to time, and apparently in a memorandum of hints or articles which he held in his hand at an interview with Oswald on the 6th of July, and from which he read, as if to refresh his memory. Oswald was anxious to get the paper, and Franklin appeared to be willing to let him have it. Two days later, Oswald sought the Doctor again, and asked him for the paper; but after reflection, Franklin had doubts as to the

wisdom of parting with it. He had been acting alone, and he was anxious to do nothing which would seem discourteous to his colleague, Jay. Then, too, he was uncertain what views, if any, Jay might have expressed to Oswald. Therefore, he asked Oswald if he had seen Jay, and in reply that he had not, suggested that he would better call upon him.

The "substance" Franklin set forth in this memorandum under two headings—"necessary" and "advisable." The first were to be insisted upon; as to the second, Franklin is made by Oswald to say, that "he could not say he had any orders about, or were not absolutely demanded, and yet such as it would be *advisable* for England to offer for the sake of reconciliation and her future interest."⁴³

According to Oswald's note of July 10, these hints of articles are in the form in which Oswald transmitted them to Shelburne, and were considered by the British Government:

"1st. Of the first class, *necessary* to be granted; independence, full and complete in every sense, to the Thirteen States; and all troops to be withdrawn from thence.

"2dly. A settlement of the boundaries of *their* colonies and the loyal colonies.

"3dly. A confinement of the boundaries of Canada; at least to what they were before the last Act of Parliament, I think in 1774, if not to a still more contracted state, on an ancient footing.

"4thly. A freedom of fishing on the Bank of Newfoundland and elsewhere, as well for fish as whales.

I own I wondered he should have thought it necessary to ask for this privilege. . . .

“Then, as to the *advisable* articles, or such as he would, as a friend, recommend to be offered by England; viz.

“1st. To indemnify many people, who had been ruined by towns burnt and destroyed. The whole might not exceed five or six hundred thousand pounds. I was struck at this. However, the Doctor said, though it was a large sum, it would not be ill bestowed, as it would conciliate the resentment of a multitude of poor sufferers, who could have no other remedy, and who, without some relief, would keep up a spirit of secret revenge and animosity for a long time to come against Great Britain; whereas a voluntary offer of such reparation would diffuse a universal calm and conciliation over the whole country.

“2dly. Some sort of acknowledgement, in some public act of Parliament or otherwise, of our error in distressing those countries so much as we had done. A few words of that kind, the Doctor said, would do more good than people could imagine.

“3dly. Colony ships and trade to be received, and have the same privileges in Britain and Ireland, as British ships and trade. I did not ask any explanation on that head for the present. British and Irish ships in the colonies to be in like manner on the same footing with their own ships.

“4thly. Giving up every part of Canada.”⁴⁴

The first step on the part of Great Britain to official negotiations was the passage of an enabling act of Par-

liament, in virtue of which the Government would be authorized to conclude peace with the American states. "An Act to Enable his Majesty to Conclude a Peace or Truce with Certain Colonies in North America Therein Mentioned" (George III, C.46, 1782) was finally passed and was to remain in effect until the first of July of the following year. The opening clause of the act declares it to be "essential to the interests, welfare, and prosperity of Great Britain, and of the colonies or plantations of New Hampshire, Massachuset's Bay, Rhode Island, Connecticut, New York, New Jersey, Pensylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in North America, that peace, intercourse, trade, and commerce, should be restored between them," and it thereupon authorizes His Majesty "to treat, consult of, agree, and conclude, with *any commissioner or commissioners, named or to be named by the said colonies or plantations, or any of them respectively, or with any body or bodies corporate or politick, or any assembly or assemblies, or description of men, or any person or persons whatsoever, a peace or a truce with the said colonies or plantations, or any of them, or any part or parts thereof; any law, act or acts of parliament, matter, or thing, to the contrary in any wise notwithstanding.*"

Upon this act, Oswald's commission was based; and the American negotiators objected to the parts of the act printed in italics, which were carried over into Oswald's original commission. The warrant for his commission was dated July 25, and it followed the language of the enabling act. A copy of the commission, based upon the warrant, was accounted for by Secretary.

Townshend, who had succeeded Shelburne in the Home Department, by the fact that the Chancellor and the Attorney-General were at a distance in the country. Franklin, according to Oswald, "seemed to be satisfied, and said, as on a former occasion, he hoped we should agree and not be long about it."⁴⁵

Oswald proposing to call upon Jay, Franklin handed him a copy of the commission to be left with him. This was to facilitate matters, inasmuch as Jay was to dine at Passy that evening with his colleague.

Jay's opinion was not that of Dr. Franklin, and he said, according to Oswald's account of the interview: "By the quotation from the Act of Parliament in the Commission he supposed it was meant that Independence was to be treated upon: and was to be granted perhaps as the price of peace: that it ought to be no part of a Treaty: it ought to have been expressly granted by Act of Parliament, and an order for all troops to be withdrawn, previous to any proposal for Treaty: as that was not done, the King, he said, ought to do it by Proclamation and order all garrisons to be evacuated, and then close the American war by a treaty." The two American commissioners, Franklin and Jay, discussed the matter with Vergennes, on the 10th. Franklin's idea was that treating with the Americans was in itself a recognition of independence, and that while it was not express or formal, it was a substantial acknowledgment. Therefore, he felt that the American commissioners could treat upon the basis of the commission. In an interview which they had with Vergennes, that seasoned Minister was of Franklin's opinion, intimating that the recognition of independence in the body of the

treaty was the natural order of things; and to Jay's insistence upon an express recognition in advance, he mentioned that the King of England was accustomed to include among his titles that of "King of France" in the preambles of treaties with France. As a matter of fact, the treaty which Vergennes was negotiating to conclude the war was to have such a clause, in which the real King of France figured only as a "High and Mighty Prince," without stating that he was King of France. This state of affairs was to continue until Bonaparte, as First Consul, dethroned George III from his French kingdom.

Jay remained unconvinced; and Vergennes advised that the American commissioners should await the arrival of the commission under seal before they took any action, as the terms of the commission might vary somewhat from the copy. This was agreed to; but in Jay's mind a suspicion was awakened that Vergennes wished to continue the dependence of the United States upon France during the course of the negotiations, and even to postpone them to suit French interests.

On the 11th of August, the day of the interview with Vergennes, Oswald called upon Franklin and a number of things were discussed, including independence and the "necessary" and "advisable" articles. On independence, Franklin stated, according to Oswald, that "by the quotations of acts of Parliament, he saw it was included in the commission; but that Mr. Grenville had orders to *grant it in the first instance*."⁴⁶ As Oswald's view ultimately prevailed, it is advisable to give it in his own language: "I replied, it was true; and that, though supposed to be granted under this commission,

and in the course of the treaty, I hoped it would make no difference . . .” Dr. Franklin thereupon asked if Oswald had instructions, to which he answered in the affirmative “and that they were under his Majesty’s hand and seal; and that by them it appeared independence, unconditional in every sense, would be granted, and that I saw no reason why it should not make the first article of the settlement or treaty.” Oswald continued, “I was only sure of one thing, that the affair might be as effectually done, as in the way proposed by Mr. Jay.”

“The Doctor replied, that Mr. Jay was a lawyer, and might think of things that did not occur to those who were not lawyers. And he at last spoke, as if he did not see much or any difference; but still used such a mode of expression, as I could not positively say would preclude him from insisting on Mr. Jay’s proposition, or some previous or separate acknowledgment.”

Franklin knew that Jay felt “it would be ‘descending from the ground of independence to treat under the description of colonies’”⁴⁷ and he did not wish to assume an attitude which would embarrass or irritate his younger and more inexperienced colleague and cause a breach between the American commissioners. This, indeed, was the attitude of Franklin throughout the entire negotiations. If, according to Shelburne’s view, independence was to be the price of peace with Great Britain, Franklin’s self-elimination at times was to be the price of the treaty in so far as Jay, and later Adams, were concerned.

On the subject of the hints, or articles, Oswald expressed to Franklin the opinion that the acceptance of

those called "necessary . . . would pretty nearly end the business: and that those called Adviseable . . . would be dropped or modified in a proper manner."⁴⁸ The attitude of Franklin on this point is again characteristic of his entire conduct. "To this," Oswald continues, "I cannot say I had any reply."

Franklin had decided notions on both heads of the subject, but he recognized that he was only one of the commissioners, and proposed that the matter be left open. Passing by the matter of Loyalists, on which the American commission was a unit, although Franklin perhaps was more determined than the others, he "at last touched upon Canada, as he generally does upon the like occasions." Oswald himself was in favour of the cession of Canada to the United States, and had recommended it to Shelburne, who had not seemed to object to it on that occasion. At the present time, Oswald suggested that "the consideration of that matter might possibly be taken up at some future time."

It is impossible to say whether Franklin could have acquired Canada if he had been supported by his colleagues. Adams seems to have favoured its acquisition in the first instance, but he was so set upon the fisheries that he apparently overlooked the fact that fisheries and the northern boundary would have come inevitably with Canada. And Jay was so determined on the acquisition of the lands between the western settlements and the Mississippi that he apparently overlooked Canada, which, if pressed, would have forced Great Britain, in its desire to keep Canada, to espouse energetically the claim of the Americans to the west against Spain. Speculation is, of course, vain; but no less a person than

Francis Wharton⁴⁹—to mention an authority of our own day—believed that Canada would have been obtained, if Franklin had had the support from his colleagues which he gave to them; for on the fisheries, the northeastern boundaries and the west, Franklin was adamant.

Jay was not thinking of Canada. His mind was taken up with Oswald's commission. In an interview of August 13, Jay informed Oswald that the Americans would not treat "untill their Independence was so acknowledged, as that they should be on an equal footing with us, and might take rank as Parties to an agreement."⁵⁰ Upon which Oswald asked him "what occasion there was then for this extraordinary caution of insisting on the solemnity on each separate deed under the great seal, since a preliminary clause or article in the treaty, as always intended, might do the whole business, by making it absolute, and not depending, on the view of ascertainment, on the event of other or subsequent articles, and which might be so expressed as to remove every doubt, as to the independence being as free and unconditional as they desired it to be."⁵¹ And to convince Jay of the sincerity of his government, Oswald showed him the fourth article of his instructions, authorizing him to treat as independent. Thereupon Jay said "that was enough, and he was fully satisfied."

Oswald's correspondence from this point until well on in September consists of a series of reasons for a new commission, in accordance with the terms desired by the American commissioners; and his views undoubtedly prevailed with his government, although Jay is credited by many with being the cause of the new commission.

There were three incidents which greatly disturbed Jay, and which seemed to justify him in the early days of September in sending an emissary to London without the knowledge of his venerable colleague. The first was, that in two interviews with d'Aranda, the Spanish ambassador in Paris, that diplomat sounded Jay on the western lands, stating the claim of his country to them, and going so far as to trace them on a map, which he obligingly turned over to the American negotiator. Jay himself, when President of the Continental Congress, in 1778, was not in favour of extensive boundaries for the colonies because of the imagined difficulty of properly governing such a wide domain."⁵² He now championed Congress's claim to the Mississippi. Rayneval, with Vergennes's sanction, had advocated the claims of Spain to the western lands in an interview with Jay, and had sent him a memorandum on the subject in support of his views.

So much for the western boundaries. Now, one François Barbé-Marbois, secretary of legation at Philadelphia, and later to be Napoleon's intermediary in the cession of Louisiana to the United States, had written, on March 13, 1782, an alleged letter to Vergennes, which was represented by the British to have been intercepted by them. A copy, in translation, obligingly was handed by Fitzherbert (Grenville's successor) to Jay. This letter disapproved of American claims to the Newfoundland fisheries. Contemporary opinion was divided as to the importance of the letter, if, indeed, it were authentic. Dr. Franklin was not impressed by it; Secretary Livingston considered it a gossiping letter which bound nobody. Barbé-Marbois himself immediately denied sending it.

M. Doniol informed Dr. Francis Wharton that it was not to be found "in the French Government's archives, though it was the practice of the French negotiators in America to send generally four copies of each despatch by separate conveyances."⁵³ It was said to be in cypher, and only a translation was handed to Jay; and Vergennes, who received from America a copy "in its English garb," wrote to Luzerne, "assuming that it may have been genuine and have been correctly deciphered and translated. . . . that the interpretation given was 'forced,' and that 'in the first place, the opinion of M. Marbois is not necessarily that of the King, and, in the next place, the views indicated in the despatch have not been followed.'" Dr. Wharton himself says, "What we know of Vergennes is this, that in spite of the prophecies of Adams and Jay that he would work against the cession of the fisheries to the United States, neither he, nor Luzerne, in the numerous letters from them, which have been published, or which are in the Department of State, ever expressed the slightest disapproval of the cession. Naturally enough they did not want the claim to stand in the way of peace, France being then almost bankrupt. But when it was incorporated as a condition of a provisional peace, though by objecting they could have caused the whole question to be reviewed, so far from objecting they expressed their gratification that the United States should have made such good terms."⁵⁴ At any rate, the Marbois letter tremendously impressed Jay.

There was a third incident which apparently weighed with Jay, inasmuch as he chronicles it in his correspondence with Livingston. D'Aranda had repaired in haste

to Versailles at eight o'clock in the morning—an unusual time for him to confer with Vergennes; and that on the same day Rayneval had left, as Jay later learned, secretly, for London, the capital of the enemy. What did this mean?

Jay felt that immediate action should be taken, and he asked one Benjamin Vaughan, an English busybody in Paris, in doubtfully close relations with Shelburne, to go posthaste to London in order to counteract Rayneval's supposed malevolent purpose. Jay confidentially supplied him with what might be called "full powers."

The causes for mistrusting Rayneval, and therefore France, and the views which Jay wanted Shelburne to receive from his emissary, Vaughan, are stated at length in Jay's letter of November 17, 1782, to Secretary Livingston:

"All these facts taken together led me to conjecture, that M. Rayneval was sent to England for the following purposes:

"1st. To let Lord Shelburne know that the demands of America, to be treated by Britain as independent previous to a treaty, were not approved or countenanced by this Court, and that the offer of Britain to make that acknowledgment in an article of the proposed treaty was in the Court's opinion sufficient.

"2dly. To sound Lord Shelburne on the subject of the fishery, and to discover whether Britain would agree to divide it with France to the exclusion of all others.

"3dly. To impress Lord Shelburne with the deter-

mination of Spain to possess the exclusive navigation of the Gulf of Mexico, and of their desire to keep us from the Mississippi; and also to hint the propriety of such a line as on the one hand would satisfy Spain, and on the other leave to Britain all the country north of the Ohio.

“4thly. To make such other verbal overtures to Lord Shelburne, as it might not be advisable to reduce to writing, and to judge from the general tenor of his Lordship’s answers and conversation whether it was probable that a general peace, on terms agreeable to France, could be effected, in order if that was not the case an immediate stop might be put to the negotiation.”⁵⁵

Bearing Jay’s secret message, Vaughan left Paris for England on the 11th of September, the day of Oswald’s letter to Shelburne, informing his lordship of the urgent need of modifying the commission, and the purposes of Rayneval’s visit, from information supplied by Jay.⁵⁶ Jay discussed the matter at great length with Vaughan, who was to communicate the substance of his remarks to Shelburne, and to impress that statesman “with the necessity and policy of taking a decided and manly part respecting America.” From Jay’s own account, it is evident that he discussed Vaughan’s mission with the British commissioner. It is also evident from Jay’s own statement that he did *not* discuss the matter with Dr. Franklin, his fellow-commissioner. He hid it from Franklin. “It would have relieved me from much anxiety and uneasiness,” he wrote to Secretary Livingston, “to have concerted all these steps with Dr. Franklin, but on con-

versing with him about M. Rayneval's journey, he did not concur with me in sentiment respecting the objects of it." Vaughan was to inform Shelburne that the policy of France was to postpone the acknowledgment of American independence until the conclusion of a general peace, "and by keeping it suspended until after the war *oblige us by the terms of our treaty, and by regard to our safety, to continue in it to the end.*"

From these statements Shelburne doubtless could have drawn a conclusion, but Jay did not wish any misunderstanding to exist, saying to Vaughan that, "it hence appeared to be the obvious interest of Britain immediately to cut the cords which tied us to France," and that so long as Great Britain refused to yield independence "we were bound, as well as resolved, to go on with the war, although perhaps the greatest obstacles to a peace arose neither from the demands of France nor America." His lordship would understand that Spain was in Jay's mind, but there was to be no misunderstanding on the point, for, upon independence being conceded, "we should be at liberty to make peace the moment that Great Britain should be ready to accede to the terms of France and America, without our being restrained by the demands of Spain, with whose views we had no concerns." Further, Vaughan was to inform his lordship that Great Britain should not think "of dividing the fishery with France and excluding us, because we could not make peace at such an expense"; "That it would not be less impolitic to oppose us on the point of boundary and the navigation of the Mississippi" for a variety of reasons, one of which was that the "immense and growing trade [in the Mississippi

valley] would be in a manner monopolized by Great Britain, as we should not insist that she should admit other nations to navigate the waters that belonged to her." And finally Great Britain was to be advised to keep out of the treaty "such distrusts and jealousies as on the one hand would forever prevent confidence and real friendship, and on the other naturally lead us to strengthen our security by intimate and permanent alliances with other nations."

Franklin was right in his reading of human nature and in his appreciation of facts. Rayneval went to London to ascertain whether Shelburne was willing to negotiate for peace on the terms stated to the French government by De Grasse, then a prisoner on parole in Paris. In the course of his interview with Shelburne and Grantham, now Minister of Foreign Affairs, Rayneval stated the first condition of peace to be the complete independence of the United States—a condition accepted by the British without objection.

In reply to a question of Shelburne's as to the boundaries which the Americans claimed, Rayneval replied that he was not authorized to speak for the Americans, but that he supposed they would be those of their charters. In reply to a question as to the fisheries Rayneval merely remarked that the fisheries in the high seas were free to all, whereas those inshore would be doubtless the subject of negotiation. And he added in his official and confidential report of his mission to Vergennes that he was unwilling to express any view on the American situation, for fear he might prejudice America's claims.

Of course, matters concerning France's claims and those of Spain were mentioned under the reserve that

Rayneval was unauthorized to speak in behalf of Spain; indeed, the entire discussion was so informal and so unsatisfactory to Shelburne that he himself proposed that it should be considered as "*non avenue*"—that is to say, without official value.

It is not difficult to know what really happened at London. The hurried journey of Rayneval was a mere incident in the negotiations. The repeated reports of Oswald, who possessed the confidence of the King,^{56a} as well as of Shelburne, were read and pondered, as is the case with diplomatic notes addressed to responsible ministers. The matter was, in view of its importance, submitted to and considered by the Cabinet; and Oswald was informed, September 20, 1782, by Secretary Townshend, in whose department the matter lay, that, "It was at once agreed to make the alterations in the commission proposed by Mr. Jay,"⁵⁷ with the concurrence of Franklin, and which had been transmitted by Oswald to his government with an insistence which convinced the Ministers of their importance.

The new commission is often assigned to Jay's energetic action, which was taken without the knowledge of his colleagues. The sole authority for this is Vaughan's own statement, made some fifty years after his interview with Shelburne. "The latter," he said, "only asked me, Is the new Commission necessary? and when I answered yes, it was instantly granted."⁵⁸ This would seem to disregard Oswald and the influence which he had with Shelburne and the King, who thought highly of him, and ascribe an influence to Vaughan, for whom the King had an opinion approaching contempt. In any event, the new commission was agreed to; and the commission

itself arrived at Paris on September 27, in company with Vaughan. Negotiations were now to begin in earnest, and with a British commissioner duly authorized to treat with the independent states of America.

III

Jay was responsible for the text of the draft treaty handed to Oswald on October 5, just as Franklin was wholly responsible for the informal propositions handed to Oswald on July 9 [10]. Franklin suffered greatly with gout and stone, and as he was unable to take a direct part in the negotiations of this period, it was necessary that Jay should speak for the commission, with the advice and consent of his elder and indisposed colleague. The propositions were but an elaboration of Franklin's "necessary articles." Dr. Franklin, however, was not kept fully informed of the interviews which his younger colleague had with Oswald.

It seemed likely at the time that Great Britain would be obliged to renounce the Floridas in the definitive treaty, and Jay was anxious that Great Britain should retain them, even although they would have to be retaken by force of arms from Spain. In this way Spain would be excluded not merely from the western lands, but also from the Floridas. Our knowledge of this phase of the negotiation is contained in the official communications of Oswald to his government. "He is indeed anxious," wrote Oswald in his letter of October 2, 1782, to Townshend,⁵⁹ "that Great Britain sho'ld regain possession of that Colony [Florida], on the same footing it stood before the War; Since, he said, their States

would not by any means like that the key of that part of the Gulph should be in the hands of the Spaniards, as the whole or the greatest part of the Trade & produce of that great back Country, would most naturally & beneficially issue there; and which, he says, would soon be very considerable; & would ultimately fall into the hands of the English on the Mobile & Mississippi; both in the Supply of English Merchandize, & Importⁿ of American Commodities in return. Rather than leave it in the hands of the Spaniards, he said it would be worth while to embark some of the Troops from New York & Charles Town, & retake it." In the postscript to this letter, Oswald writes, "Mr. Jay came again upon the Subject of W. Florida and expects & insists that for the common good, our own as well as theirs, that it may not be left in the hands of the Span^{ds}. And thinks we ought to prepare immediately for the Expedition, to execute it this Winter."

In transmitting Jay's proposal, Oswald added: "He earnestly begs that it may not be known [to Great Britain, Franklin, or Vergennes] that he advised it. And wishes I had mentioned it as of myself. As I approve of the thing I thought the proposal would be strengthened by his Opinion & to Speak the truth I could not suppress the Credit due to him for attending to it."

Had Jay's proposal been accepted by Great Britain, and the garrison at New York sent to West Florida to carry it into effect, Great Britain might have extended its domain westward to the Mississippi, either then or later, so that the United States would have been hemmed in on the north by Canada and on the south by

British Florida controlling the mouth of the Mississippi and, as Jay suggested, the commerce of the West. Louisiana itself might have been seized by a British fleet before it had been transferred by Spain to France, or afterwards. It is fortunate for the United States that Great Britain did not accept the advice which John Jay gratuitously offered.

The draft of what may be called the American proposal, to which Oswald agreed, was duly transmitted to London on October 8, 1782. The Government now had for the first time something more than vague or unofficial expressions as to what could or should be done in order to restore friendly and confidential relations between what were destined to be two branches of the English-speaking peoples. The Americans had negotiated separately. "For various reasons," as Jay himself said, "the articles were not communicated to the Comte de Vergennes." The British negotiators had driven a wedge between the Americans and their French ally.

When the proposals arrived the situation was more favourable to Great Britain than it had been since the news of Rodney's victory over France in the West Indies. The reason was that Gibraltar, besieged by France and Spain on land and shut off from the world at large by their combined fleets, had been provisioned, in September, by a British fleet under Lord Howe, and the combined attack of the land and naval forces of France and Spain against Gibraltar had been repulsed on the 14th of October. The proposals of Great Britain's enemies—for those of France and Spain arrived at the same time—were therefore considered by the Cabinet in an atmosphere of victory. The terms of France and

of Spain, including the surrender to Spain of the impregnable fortress, were repulsed as had been their military attack, and Lord Shelburne and his colleagues likewise rejected the American terms as not in accordance with the present situation.

Thus the Americans had tried to but could not separate themselves from France. They owed their independence to France, and the terms in which it was to be acknowledged depended upon the situation of France. Oswald was rapped over the knuckles by Shelburne, and Henry Strachey, an under-secretary of the Home Office, was sent to advise him. His lordship's language is expressed in terms of Gibraltar. In a letter of October 21,⁶⁰ he said, in a letter to Oswald, "I find it difficult if not impossible to enter into the policy of all that you recommend upon the subject both of the fishery and the boundaries, and of the principle which you seem to have adopted of going before the Commissioners in every point of favour and confidence. The maxim is not only new in all negotiations, but I consider it as no way adapted to our present circumstances, but as diametrically opposite to our interests in the present moment."

The British Government was here taking advantage of the weeks of delay produced by the wrangle over the terms of a commission, during which time Gibraltar had been relieved, to cause the Americans to suffer the consequences of a French and Spanish defeat which had occurred in the interval.

Lord Shelburne's attitude towards France and Spain was now even more belligerent. "It is our determination," he wrote to Fitzherbert, who had succeeded Grenville as negotiator with the continental enemies, in an

instruction of the same date,⁶¹ "that it shall be either war or peace before we meet the Parliament. . . . It may be of importance that the French Ministry be made to understand this clearly, and it may be the means of bringing both them and the Spaniards to an ultimatum, which will leave nothing to us but to say *yes* or *no*."

The Netherlands was a belligerent and presented its project, to the effect that as a preliminary to any treaty of peace, Great Britain should accept the rules of maritime warfare laid down by the Armed Neutrality. It also demanded the restitution of all English conquests and compensation for merchant vessels which Great Britain had captured. All of the terms were refused. Gibraltar had not merely dominated Spain, it overawed the allies; and Canada was lost in its lengthening shadow.

These were anxious moments for the American commissioners, and the new terms which Strachey was instructed to present were in effect a counter-project. The boundaries were unsatisfactory and were to be remade; the Loyalists, the refugees, and the British creditors must be looked after, and the fisheries restricted.

Under the "Gibraltar instructions" Great Britain now claimed the lands to the west of the former colonies as set forth in the Proclamation of 1763, as enlarged by the French boundary of Canada before its cession to Great Britain under the treaty of that year.

The reason for this demand was to have territory from which to satisfy the claims of the Loyalists. This was not all. The Loyalists were to be looked after in the east as well, and the British commissioners were therefore directed to insist upon the surrender of the

province of Maine, then an integral part of Massachusetts. If this were not to be obtained then the Province of Sagadahock, extending as far west as the Kennebec River, and in any event the territory between Penobscot Bay and the River St. John was to be retained. The relief of Gibraltar involved, in Lord Shelburne's opinion, the relief of the Loyalists and British creditors. "It is understood," so his instructions concluded, "that if nothing of this can be obtained, after the fairest and most strenuous trials, it may be left to the Commissioners to settle, and the American propositions be accepted, leaving out the right of drying fish on the island of Newfoundland, and confining them to what hitherto they have used, a drift fishery; and expunging all the last article [concerning equality and reciprocity of commercial intercourse] except what regards the Mississippi."⁶² However, his lordship was not willing to drop the claims of his loyal countrymen even if these territories were not to be obtained. "It must appear authentically," he continued in his instructions, "that every instance has been used, in favour both of the refugees and of the debts prior and subsequent to 1775, and more favourable terms must be obtained, if possible, in the way of absolute and positive engagement; if not, in the way of recognition." If the British should fail in the west (and they did), the east might do, provided the Americans should help their "enemy" to wrest West Florida from Spain, France's ally.

"The refugees are of great importance," Lord Shelburne stated in justification of these latter demands, "but, if the province of Maine be left to Nova Scotia, and the Americans can be brought to join us in regard

to West Florida, there are resources which may satisfy them; but the debts require the most serious attention,—that honest debts may be honestly paid in honest money,—no Congress money.” But his lordship saw a way out—not at the expense of Great Britain, to which the Loyalists had rendered a service, but at the expense of the Americans, to whom they had rendered a disservice. “To remedy this,” he said, in his letter of October 21 to Oswald, “the matter of the boundaries and back lands naturally presents itself. Independently of all the nonsense of charters, I mean when they talk of extending as far as the sun sets, the soil is, and has always been acknowledged to be the King’s.”

His Lordship was then speaking in behalf of Great Britain. He next appears in the character of adviser to the United States. “For the good of America, whatever the Government may be, new provinces must be erected on those back lands and down the Mississippi; and supposing them to be sold, what can be so reasonable as that part of the province, where the King’s property alone is in question, should be applied to furnish subsistence to those, whom for the sake of peace he can never consistently with his honour entirely abandon.” In Secretary Livingston’s opinion, this was the best land of all America.

On October 23, 1782, Oswald received Shelburne’s letters informing him, as Jay says in his letter of November 17th to Secretary Livingston, “that the extent of our boundaries and the situation of the Tories, etc., caused some objections, and the Minister’s Secretary was on the way here to confer with us on those subjects.”⁶³ This was a gentle way of breaking the news,

but it was enough to cause Jay to dine, on the evening of the 24th, with Dr. Franklin at Passy.

Two days later John Adams joined his colleagues in Paris. Before meeting Jay, which he did two days after his arrival, Adams had learned of "Jay's firmness and independence"; that he had acted "without asking advice, or even communicating with the Count de Vergennes," and that this action on his part had been taken "even in opposition to an instruction."⁶⁴ Adams later looked up Dr. Franklin, whom he met on the 29th, and he informed that venerable gentleman that he approved Jay's conduct, although he knew that it was contrary to Franklin's views. He had already met Oswald and Strachey—Shelburne's secretary, who had arrived in Paris on the 28th, the day before Adams waited upon Franklin. As compared with Vergennes, Franklin had been treated with courtesy, for Adams did not present himself to the French Minister of Foreign Affairs until some weeks after his arrival, and then only upon an intimation from both Franklin and Lafayette that Vergennes would be glad to meet him. Adams's interest, from his arrival in Paris, seemed to have centered in Jay and the British negotiators.

With Strachey's arrival the negotiations began again. On the evening of the 29th Oswald introduced him to Jay, and they were joined by Adams. Together they took up some of the objections to the proposed treaty which had been submitted to Oswald on the 5th of October and to which the British Ministry was opposed. It may be surmised that the American commissioners were not exuberant in their expressions of opinion, and Oswald was led to think that "some things" might be

gained. These were busy days, meetings in the mornings and afternoons, and often dining together at night, in order to expedite matters to have the treaty in form for presentation to Parliament. In a postscript to Oswald's letter to Shelburne, of the 29th, he reports all the commissioners in favour of paying the debts due to British creditors, contracted before the war—a concession due to John Adams.

IV

The American commissioners were now acting together. "The first conference we had afterwards with Mr. Oswald," Adams writes in his diary, "in considering one point and another, Dr. Franklin turned to Mr. Jay and said, I am of your opinion, and we will go on with these gentlemen in the business without consulting this Court." It is perhaps to be understood that the American commission had in mind "official" consultations, as distinct from private expressions of opinion or casual or social meetings. But apparently the Doctor had come to the conclusion that the treaty of peace could only be made by the sacrifice of his own sense of propriety. The commission had to act together as a unit if its labours were to be successful, and it was better to sacrifice form than substance. He had always been a believer in united action, and at no time had he acted independently of his colleagues. In any event, Adams states the fact, saying, "He has, accordingly, met us in most of our conferences, and has gone on with us in entire harmony and unanimity throughout, and has been able and useful, both by his sagacity and his reputation, in the whole negotiation."⁶⁵

The American commissioners would hear nothing of the proposed expansion of Canada to the boundaries of 1774 and the renunciation of lands to the west of the settlements, in accordance with the British proclamation following on the heels of the renunciation of French rights. However, they were anxious about the treaty, for "having [says Fitzmaurice] practically thrown over the French alliance," they "had to recede from the extreme demands originally formulated by Franklin."⁶⁶

The American proposal of October 5 for a boundary between Canada and the United States from the St. Lawrence to Lake Nipissing and thence to the source of the Mississippi was, according to the Proclamation of 1763, the southwestern boundary of the province of Quebec as far as that lake. It was also the boundary line laid down by the Congress of 1779 in its instructions to Adams for a treaty of peace with Great Britain, and the expansion to the Mississippi was likewise in accordance with these instructions.⁶⁷

In Adams's letter of November 6, 1782, to Secretary Livingston, it appears that this Lake Nipissing line had been dropped. He said: "We have offered them the choice of a line through the middle of all the great lakes, or the line of 45 degrees of latitude, the Mississippi, with a free navigation of it at one end, and the river St. Croix at the other."⁶⁸ The British chose the line through the Great Lakes.

In Franklin's "hints" and the American proposals of October 5, the eastern boundary between the United States and Nova Scotia was fixed at the river St. John. The British wanted the entire province of Maine, or at least as far as the Kennebec, but stood fast for Penob-

scot Bay and river, which were in their possession at the time. The Americans were united in rejecting these claims, and in the end secured the St. Croix River, between the St. John and the Penobscot, as a compromise.

The Americans were hard pressed on the fisheries, and the right to dry fish on the coasts of Newfoundland contained in the American proposals of October 5, was renounced. Shelburne's instructions had been positive as to this. A compromise, however, was reached by which American fishermen were to enjoy the right of drying their catch upon the coast of Nova Scotia. Fishing was primarily a New England interest, and Adams's presence brought it and kept it to the fore. Although the British refused to yield to his arguments, they appear to have been much affected by Franklin's views, which are thus recorded by Strachey in his letter to Secretary Townshend, written from Calais under date of November 8, 1782:⁶⁹ "I observe as to catching fish you mention only the Banks of Newfoundland. Why not all other places, and amongst others the Gulph of St. Lawrence? Are you afraid there is not fish enough, or that we should catch too many; at the same time that you know that we shall bring the greatest part of the money we get for that fish, to Great Britain to pay for your manufactures?" The Doctor did not push his views to the point of irritation; he hoped for a compromise. "He agreed it might be proper not to have a mixture of their people with ours for drying on Newfoundland, but supposed there would be no inconveniency in throwing ashore their fish for a few days, on an unsettled beach, bay or harbour, on the coast of Nova Scotia."

The conquest of West Florida which Jay had often

urged in his conversations with Oswald, by using the British garrison, had made its appearance in Secretary Townshend's instructions of October 26 to Oswald.⁷⁰ "There was one part of your letter which referred to a Proposal of M^r Jay's which seems to have been frequently and eagerly urged by him. I mean that of an Expedition against West Florida. I do not think he went so far as to guarantee a quiet evacuation of New York."

Jay's colleagues, who knew nothing of his secret proposition to Oswald, refused to guarantee "a quiet evacuation of New York." As Adams says in his diary, "all that we could agree to was, that the effects and persons of those who would stay behind, should have six months to go off; nor could we agree to this, unless as an article to be inserted in the general peace."⁷¹

In season and out of season the British commissioners pressed upon the American negotiators relief to the Loyalists, proposing that certain persons peculiarly obnoxious to the Americans might be excluded from compensation. The Americans refused. Oswald's proposal to them "of recommendation to Congress in their favor in general" was at first "to no purpose." Neither the western lands nor any parts of Florida then in the possession of Spain were to be used or to inure to the benefit of the Loyalists. In his letter to Townshend of November 8,⁷² Strachey said: "With regard to the refugees, I see nothing for them except what you have in Canada, and the little piece now added to Nova Scotia, between the original boundary sent to you by Mr. Oswald and that now obtained."

Under these circumstances Strachey hastily left for

London on November 5, 1782, with the proposals "all thrown together in one paper . . . to be afterwards arranged in more proper order, which there is no time for at present."⁷³ Shelburne had said, in speaking of France, that the time had come for "yes or no." It had come for the Americans, and for the same reasons. Strachey arrived at London on the 10th; he returned to Paris on the 25th of November, with three very precious documents in his possession; first, the sense of the Cabinet, under date of November 15; secondly, instructions from Townshend to Oswald under date of November 19; and finally a letter from Shelburne to Oswald under date of November 23. Therefore, for twenty days there was a lull in the negotiations, although in the meantime Oswald was busy conferring with one or other of the American commissioners in order to see whether the line held or if there were sign of yielding here and there. The American commissioners conferred among themselves, and Adams talked matters over with Vergennes and Rayneval. Even Jay at last had proposed to take the views of Vergennes, in writing, upon the points which still divided Great Britain and America.

On Sunday, November 10, Adams waited upon Vergennes, who asked him "how we went on with the English," to which Adams replied, "we divided upon two points,—the Tories and Penobscot; two ostensible points; for it was impossible to believe that my Lord Shelburne or the nation cared much about such points."⁷⁴ This first interview is important as showing that Adams, notwithstanding the inhibition to discuss matters with the French, had himself discussed freely of their affairs, and that Vergennes was familiar with the difficulties.

The French had made no secret of their views about the Loyalists—Adams himself saying that the French minister at Philadelphia had made “some representations to Congress in favor of a compensation to the royalists, and the Count de Vergennes, no longer than yesterday, said much to me in their favor.”⁷⁵

On the 16th, the ubiquitous Vaughan made his appearance and offered to repair to London to cause “his friend” Shelburne to weaken on the Loyalists, and he informed Adams that “he found Dr. Franklin’s sentiments to be the same with Mr. Jay’s and mine, and hoped he should be able to convince Lord Shelburne; he was pretty confident that it would work right.” Vaughan went, but it did not “work right.” He was unable to move the Prime Minister. Like other people, his lordship only allowed himself to be persuaded to do what he wanted to do.

On November 22, Adams called upon Jay, and learned that Oswald, after reading one of his letters from London, had said to him: “the tories stick,” and that “Strachey is coming again, and may be expected today.”⁷⁶ Apparently the American commissioners were worried about the Loyalists, Jay saying “We had now to consider, whether we should state the question in writing to the Count de Vergennes, and ask his answer.” But Adams was rather for attacking the British: “We must be more dry and reserved and short with him, [Oswald] than we had been.” Upon this Jay remarked, “We must endeavor to discover, whether they agree to all the other points.” Adams was also worried, and he asked Jay “what he thought of agreeing to some compensation to the tories, if this Court advised to it.”

Jay was of opinion that "a tract of land, with a pompous preamble, would satisfy the English."

Strachey had returned by the 25th, and on that day, Adams, Franklin and Jay met at Oswald's lodgings. Adams stated the seriousness of the situation in the opening lines of his diary for that day:⁷⁷ "Mr. Strachey told us that he had been to London, and waited personally on every one of the King's Cabinet Council, and had communicated the last propositions to them; they, every one of them, unanimously condemned that respecting the tories, so that that unhappy affair stuck, as he foresaw and foretold that it would.

"The affair of the fishery too, was somewhat altered. They could not admit us to dry on the shores of Nova Scotia, nor to fish within three leagues of the coast, nor within fifteen leagues of the coast of Cape Breton. The boundary they did not approve; they thought it too extended, too vast a country, but they would not make a difficulty. That if these terms were not admitted, the whole affair must be thrown into Parliament, where every man would be for insisting on restitution to the refugees. He talked about excepting a few, by name, of the most obnoxious of the refugees."

Under date of November 15, 1782, a short but clean-cut statement of British demands was endorsed in Shelburne's handwriting under the caption of "Sense of the Cabinet."⁷⁸

"To send a copy of the Preliminaries as settled last night for the Americans to take or leave.

"*Private* exceptions are always understood to be admissible.

“To send general instructions to Mr. Oswald referring him for every particular to Mr. Strachey.

“To give Mr. Strachey private instructions relative to the last article stating the different classes of loyalists, and which of them are to be finally insisted upon and which only contended for.

“These instructions not to be communicated, but to assist Mr. Strachey’s memory, and to govern his own and Mr. Fitzherbert’s judgment as to finally agreeing.

“To order Mr. Oswald to sign whenever Mr. Fitzherbert, Mr. Strachey and himself agree in thinking it expedient.

“Care must be taken to refer to Mr. Oswald’s original instructions, that there may be no doubt as to his Powers.

“To empower Mr. Fitzherbert to avail himself of France, so far as he may judge prudent from circumstances.

“Mr. Fitzherbert’s interposition will be useful, if it be for no other purpose than to let the Americans see the *possibility* of an appeal to France on our part.”

Secretary Townshend wrote, under date of November 19, a letter marked “*most secret and confidential*” to Oswald, saying that “By him [Strachey] we send such a Treaty as we can sign. You will find in it a full satisfaction given to the Americans in the principal points of the Controversy.”⁷⁹ He warned Oswald that he was not to sign without the King’s special order for that purpose. If the American commissioners should agree to the treaty as transmitted to them, or if Fitzherbert and

Strachey should concur with the alterations or modifications proposed by the American commissioners, then Oswald was to sign the articles "without waiting for any further Instructions or Directions from hence." The matter was, as the Secretary said, "of extreme delicacy and importance," and Oswald was, before signing, "to receive from Mr. Strachey and Mr. Fitzherbert their opinions under their hands signifying their concurrence in the measure."

In Shelburne's letter to Oswald of November 23,⁸⁰ his lordship mentions three matters which must have seemed to him to be the most important of those under consideration. The first was the fisheries, which were to be settled in such a way as to obviate "future dissension." It was the same with the refugees. "This country," he stated, "is not reduced to terms of humiliation, and certainly will not suffer them from America."

The fisheries were first in his lordship's statement. At a trying moment⁸¹ Jay asked Oswald if he "had now power to conclude and sign with us," to which Strachey replied, "Absolutely." Jay then asked "if the propositions now delivered us were their ultimatum." The answer was not so forthcoming. Strachey "seemed loath" to reply, "but at last said, No." Fitzherbert told them that Vergennes wished the fishing grounds of each nation to be fixed. The American commissioners were unwilling to accept "the limitation of three leagues from all their shores, and the fifteen from those of Louisburg."

The right to fish off the banks of Newfoundland was conceded, but the British commissioners insisted upon the word "liberty" instead of right in fishing in Newfoundland waters within three miles of the coast.

"Right," said Strachey, and justly, "was an obnoxious expression,"⁸² and matters ran so high that Adams said he would never put his hand "to any articles without satisfaction about the fishery."

With the fisheries the question of the Tories had been discussed. On the 26th, the American commissioners breakfasted at Jay's to consider the propositions which Oswald had made to them the day before. No doubt they discussed Oswald's proposition made earlier about a recommendation of Congress to the states, which Adams and Jay had rejected. The conclusion was that compensation as proposed by the British Government was unacceptable. Apparently Dr. Franklin was more opposed than his colleagues to compromise on this point, as he read them a letter on the subject which he had prepared for Oswald, and which they agreed "that he should read, as containing his private sentiments."⁸³

The 27th of November was spent with the British commissioners "endeavoring to come together concerning the fisheries and tories." The 28th and the 29th were likewise so spent. Oswald at this juncture informed his colleagues of the suggestion which he had previously made in his letter of November 15 to Townshend. The British commissioners decided to lay it formally before the Americans. They did so; it was accepted—the Americans well knowing that in point of law a recommendation of the Congress to the States in behalf of the Loyalists did not change the situation, and the British hoping to relieve the Loyalists by this empty formula. Without this compromise there would have been no treaty.

The other obstacle was the fisheries, and as Oswald said in his letter of November 30⁸⁴ there would have

been no treaty had the British not given way on the fisheries. The points of difference were, as Oswald said, "3 leagues and 15 leagues" and the refusal to allow the American fishermen "the privilege of drying fish on the unsettled parts of Nova Scotia." Oswald was in favour of according both these demands, but he said that his instructions would not permit him to accept them. His colleagues, Fitzherbert and Strachey, however, discovered "a discretionary power in Mr. Strachey's instructions, regarding the whole of this article, as well in extent as manner." These gentlemen had apparently absented themselves to discuss the advice which they should give Oswald about proposed concessions. Upon their return Strachey proposed to accept Adams's draft of the fishery article if the word "liberty" were used instead of "right," to designate what the English doubtless considered a privilege to fish within three miles of the shore in the fishing grounds to be assigned to the Americans. This was agreed to by Adams and the other American commissioners.

It will be observed that the word "right" is used in the treaty in reference to the high seas, and "liberty" in reference to territorial waters. There was, therefore, in the minds of the British negotiators, a difference between the two words—a liberty in English law being a grant, and as such, in the opinion of Great Britain liable to be revoked by war, as it later was; whereas, a right to take fish in the high seas is not a grant from any nation but exists under and is protected by international law.

Adams would have preferred "right" in each case, but the British negotiators assured him that "right" was "liberty" and "liberty" was "right"; that "liberty"

was more agreeable to British ears; and, as Adams said some years later, he did not think it worth while to contend for a word. The concession was that of Adams, who was the spokesman of the commission for the fisheries. As a lawyer, and at the time Chief Justice of Massachusetts, he should have understood the distinction, and not have lost, by yielding, the right of citizens of his state and, indeed, of his country, to fish in Newfoundland waters on a plane of equality with subjects of Great Britain. He should have insisted upon and obtained the privilege as a right.

The two great obstacles to a treaty were out of the way in so far as the British commissioners were concerned. Would the agreement be signed? Fitzherbert was of the opinion that Oswald's instructions stood in the way. "We can consider ourselves as little more than pens in the hands of government at home"; he said, "and Mr. Oswald's instructions are *so* particular."⁸⁵ Adams replied, "The time is not so pressing upon us, but that we can wait till a courier goes to London with your representations upon this subject, and others that remain between us; and I think the ministers must be convinced." This might have meant beginning all over again, as Fitzherbert put it, "to send again to London, and have all laid loose before Parliament, was so uncertain a measure—it was going to sea again." What should be done? At this moment Dr. Franklin intervened with crushing effect saying that "if another messenger was to be sent to London, he ought to carry something more respecting a compensation to the sufferers in America." The British were in a quandary; they feared it would be dangerous to give the Americans an oppor-

tunity to suggest "some new demands under the head of one or more of the other articles" as they were "in such humor" as to have asked for something "which might have been of worse consequence than that of giving up these restraints of fishery."⁸⁶

Of the possibility of such action on their part, Oswald recounts "one specimen" of the happenings of the morning of the 29th, just before the British gave way on signing: "one of those gentlemen"—it was the venerable Franklin, whose "private animosity and resentment which he still entertains against England" according to Fitzherbert, preventing his colleagues from throwing France overboard and putting their confidence in their former enemy⁸⁷—"pulling a paper out of his pocket, proposed that His Majesty should recommend to his Parliament, to make provision for the payment of certain effects which had been seized by order of his generals and entirely out of the consequences of military irregularities, and such as they could bring undoubted proofs of, and which he said ought to be paid upon the same principles of justice, as was urged in favour of the recovery of debts."⁸⁸ This had always been a favourite argument of Dr. Franklin; and his colleagues, apparently seeing the consternation of the British commissioners, pressed home their advantage. Adams "recounted the history of General Gage's agreement with the inhabitants of Boston, that they should remove with their effects, upon condition that they would surrender their arms; as soon as the arms were secured, the goods were forbid to be carried out, and were finally carried off, in large quantities, to Halifax. Dr. Franklin mentioned the case of Philadelphia, and the carrying off of effects

there, even his own library. Mr. Jay mentioned several other things; and Mr. Laurens [who had just arrived] added the plunders in Carolina, of negroes, plate, &c.”⁸⁹

V

The rest of the tale is quickly told. “After hearing all this,” Adams continues in his diary, “Mr. Fitzherbert, Mr. Oswald, and Mr. Strachey, retired for some time; and, returning, Mr. Fitzherbert said that, upon consulting together, and weighing every thing as maturely as possible, Mr. Strachey and himself had determined to advise Mr. Oswald to strike with us, according to the terms we had proposed as our ultimatum respecting the fishery and the loyalists.” “Accordingly,” Adams goes on to say, “we all sat down, and read over the whole treaty, and corrected it, and agreed to meet to-morrow, at Mr. Oswald’s house, to sign and seal the treaties, which the secretaries were to copy fair in the mean time.”

Adams and Jay were no doubt elated with the victory, but Franklin was heavy at heart and ill at ease. He had been reluctant to sign the treaty before Vergennes should know of the agreement reached; therefore, he wrote to the French Minister during the course of the day that the British and American negotiators had agreed “on the preliminary articles of the peace between those States and Great Britain. To-morrow I hope we shall be able to communicate to your Excellency a copy of them.”⁹⁰

Why was the treaty called provisional, and what were its terms; and wherein did they differ from those contained in the formal instrument of September 3, 1783?

The American commissioners had violated their own instructions not to negotiate except in full privacy with France; but they could not violate the alliance, which forbade a separate peace, nor the understanding with Vergennes which was that neither peace treaty, the American nor the French, should be finally effective, until both were signed on the same date. Therefore the Anglo-American agreement was entitled as provisional articles, "to be Inserted in, and to Constitute the Treaty of Peace," but not to be regarded as final "until Terms of a Peace" were "Agreed Upon Between Great Britain and France."

The first article carried into effect the agreement reached with Oswald, that Great Britain should acknowledge the freedom, sovereignty and independence of the thirteen states composing the United States, specifically naming them, relinquishing "all claims to the Government, property and territorial rights of the same, and every part thereof." It was also understood that in the event of the treaty failing of ratification, this article should stand and be in itself an acknowledgment of their freedom, sovereignty and independence.

What was the territory of the United States? Article II set it forth in full, bounding it on the east by the St. Croix, on the north by the now familiar river-and-lake boundary as far west as the Mississippi, thence in the middle of that river south to 31° north latitude, thence east along that line to the Apalachicola River and along that stream to its junction with the Flint, thence direct to the source of the St. Mary's River and down that watercourse to the Atlantic.

The third article dealt with the fisheries, recognizing

the right of the Americans to take fish anywhere on what may be called the high seas, and to have the "liberty" to take fish of every kind in the territorial waters of Newfoundland and of other parts of British North America, but American fishermen were not to enjoy the liberty to dry and cure their catch on the shores of Newfoundland, although they were granted the liberty to do so "in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground."

By the fourth article the creditors, British as well as American, were to meet "with no lawful impediment to the recovery of the full value in sterling money, of all *bona fide* debts heretofore contracted."

Article V dealt with the Loyalists, refugees, or Tories as the American commissioners contemptuously called them. It was retrospective in its nature, and included a variety of classes. Congress should "earnestly recommend" the legislatures of the respective States to provide for the restitution of confiscated estates and rights "belonging to real British subjects." This was a general stipulation in favour of the Loyalists. Those residing in "districts in the possession of His Majesty's arms, and who have not borne arms against the said United States" were to be included in a like recommendation; and "persons of any other description" were to be free to come and remain "twelve months unmolested in

their endeavours to obtain the restitution of such of their estates, rights and properties as may have been confiscated." This was not all. Congress was to recommend "a reconsideration and revision of all acts or laws regarding the premises" in order to render them consistent with one another, "not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail." Congress was also to recommend that the estates and properties "of such last-mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the *bona fida* price (where any has been given)" which the new owners may have paid. And it was agreed finally that "all persons who have any interest in confiscated lands, either by debts, marriage settlements or otherwise, shall meet with no lawful impediment in the prosecution of their just rights."

This article later gave rise to acrimonious discussion and caused bitterness between the countries. But the American commissioners, be it said, had clear consciences; they had repeatedly informed the British negotiators that Congress possessed no power in the premises; that each of the states would have to determine this question for itself, and that they could not answer for the recommendation of Congress in this behalf. It can not be said, however, that Great Britain was getting nothing of value, for it was a recognition on the part of the American negotiators and upon that of the United States, if the treaty should be ratified, that all persons mentioned in that article had claims against the states of such a nature which the Congress

should in honour and decency call to their attention. The resolution of Congress to the different states concerning the restitution of property was, in Strachey's opinion, to be "equivalent to a Message from the King to Parliament," and he thought that it was not probable "any refusal will be given except to a very few who are particularly obnoxious."⁹¹ It is probable that the British Ministers were of Strachey's opinion.

Article VI was an amnesty clause providing against future confiscation, future prosecutions, or future loss to anyone, either in his personal liberty or property, "for, or by reason of the part which he or they may have taken in the present war," and "that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued."

The seventh article provided for the cessation of hostilities, both by land and by sea, the liberation of prisoners, the withdrawal of the British armies, garrisons and fleets, "with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants." They were to leave "in all fortifications the American artillery that may be therein," and to return "all archives, records, deeds and papers, belonging to any of the said States, or their citizens," which in the course of the war may have fallen into the hands of His Majesty's officers, to the states and persons to whom they belonged.

Article VIII provided that the navigation of the Mississippi from its source to the ocean should remain forever free and open to the subjects of Great Britain and

the citizens of the United States. This was on the supposition that the Mississippi had its source in Canada. It was later found to rise in the United States. There was also a difficulty in regard to the mouth of the river, for the United States extended by this treaty only to 31° north latitude, so that the territory from this point to the ocean was in other hands. If West Florida should finally fall to Spain, then Great Britain and the United States were ceding to one another a privilege which neither possessed as a right; but if West Florida should fall to Great Britain, through conquest, as Jay earnestly hoped and had frequently urged upon the British, that power might have claimed from the United States a right to navigate the Mississippi above West Florida, while the United States could not have claimed any right to navigate the Mississippi below the line of 31° ; nor could Great Britain have had a right to navigate to the mouth, unless the strip to the east of the Mississippi forming the Island of Orleans should be detached from Spain and annexed to a British Florida.

There was a ninth article, providing for the restoration of any property conquered by one of the contracting parties from the other before "the arrival of these articles in America."

This was as much of the treaty as Franklin communicated to Vergennes on November 30, the day of its signing. There was a separate and secret article which he did not transmit. It looked to the reconquest of West Florida, which Spain had by force of arms wrested from England during the war; and in the event of the British succeeding, it was provided that the southern boundary of the United States should be a line drawn

“from the mouth of the river Yassous, where it unites with the Mississippi, due east, to the river Apalachicola.” Great Britain did not acquire Florida by force of arms, and did not become possessed of it by negotiation; therefore, Jay’s plan of having Great Britain for a neighbour on the south as well as on the north, and in control of the Mississippi, failed of fruition. The reader will see later in this volume that this secret article remained to plague American statesmen when the United States entered into negotiations with Spain for the settlement of the northern boundary of the Floridas, which was, of course, the southern line of the United States.

The original American proposal handed by Jay to Oswald on the 5th of October, contained a clause in elaboration of one of Franklin’s points, to the effect that the two countries should adopt the principle of equality and commercial reciprocity. This clause was omitted in the British counter-proposals. It was apparently thought best to end hostilities and later to agree upon the terms of a commercial treaty. The additional articles proposed in the course of 1783 were unsatisfactory to the negotiators of both sides. The hope of equal and reciprocal commercial arrangements was displeasing to British merchants of the day, and the result was that nothing was done in that line. But the English were either so well satisfied with the preliminary articles, or feared that they might be rendered less satisfactory by re-opening negotiations in their behalf, that the form of a definitive treaty which they proposed to the American negotiators for signature was in effect the text of the preliminary articles, with an appropriate preamble.

The desire of the American commissioners upon the signing of the preliminary articles was to transmit them at the earliest practicable date to the Congress; it was also their duty to convey the articles to the Court of France. There were explanations to be made to each.

It was agreed that Adams and Jay should prepare a joint letter to Congress. Adams apparently prepared the draft, in which Jay made "some additions" and Laurens "some corrections and additions." Franklin proposed "a few other corrections," and Adams informs us "All agreed to meet at my house at eleven tomorrow [December 14] to finish the joint letter."⁹²

The draft of the letter to Congress is in Adams's handwriting.⁹³ The paragraph respecting the secret article of the treaty is not contained in the original draft, and the paragraph on the action of the American commissioners towards France is in Jay's handwriting. There are two paragraphs of which special mention should be made; the first is the separate, secret article, in which the commissioners say, "it was our policy to render the navigation of the River Mississippi so important to Britain as that their views might correspond with ours on that subject." In the hands of Great Britain, West Florida had been extended to the north, and the commissioners felt it advisable to accord this strip to Great Britain if West Florida should remain British, "as an additional inducement to their joining with us in agreeing that the navigation of the river should forever remain open to both."

The second of the paragraphs referred to Jay's contribution. "As we had reason to imagine," so it reads, "that the articles respecting the boundaries, the refu-

gees, and fisheries, did not correspond with the policy of this Court, we did not communicate the preliminaries to the minister until after they were signed; (and not even then the *separate article*). We hope that these considerations will excuse our having so far deviated from the spirit of our instructions. The Count de Vergennes, on perusing the articles appeared surprised, (but not displeased),⁹⁴ at their being so favorable to us." There was here the admission of the American commissioners that they did not communicate the preliminaries to Vergennes, and that in so doing they had to this extent "deviated" from—not necessarily violated—the spirit of their instructions, and that Vergennes was pleased at the results obtained—they might have added, notwithstanding the discourtesy with which the Americans had treated him. The text of this part of the commissioners' report is that of Jay, but there are three words in parentheses which must have been added by Franklin, who was the only one of the commissioners in a position to assure Secretary Livingston that Vergennes was, indeed, surprised "but not displeased."

In accordance with his promise, Franklin had furnished a copy of the articles as signed, to Vergennes, "who thinks," Franklin wrote Livingston on December 5, "we have managed well, and told me, that we had settled what was most apprehended as a difficulty in the work of a general peace, by obtaining the declaration of our independency."⁹⁵

Dr. Franklin was busy with a new loan for the coming year, without which it was feared matters could not be carried on in America. "I have been constant in my solicitations both directly, and through the Marquis de

Lafayette, who has employed himself diligently and warmly in the business," he wrote in the same letter to Livingston.⁹⁶

Apparently, Franklin did not apprehend untoward consequences from the discourtesy of the American commissioners to France. The delay in receiving the moneys which he had asked of the Court he attributed to other causes. "The negotiations for peace are, I imagine, one cause of the great delay and indecision on this occasion beyond what has been usual, as the quantum may be different if those negotiations do or do not succeed. We have not yet learned what we may expect. We have been told that we shall be aided, but it cannot be to the extent demanded; six millions [livres] have been mentioned, but not as a sum fixed. The minister tells me still, that he is working upon the subject, but cannot yet give a determinative answer. I know his good will to do the best for us that is possible."

Franklin learned on December 14, 1782, that France and Great Britain had agreed upon "the principal preliminaries."⁹⁷ With these matters off his hands, Vergennes was able to turn his mind to the Americans. The American commission, on the same 14th of December, had signed their note of explanation to Vergennes, accompanying the preliminaries of peace, and their desire for a substantial loan. On the 8th of December, Franklin had written to Vergennes, saying that Congress had sent "a packet boat express with their orders to me to implore the aid of his Majesty, our Friend and Father, which [I] thereby do most earnestly from a full conviction that unless the Loan is obtain'd, our Army can neither be kept up nor safely disbanded."⁹⁸ The

money not having come, and time pressing (a vessel happily named the *Washington* was in readiness to convey the despatches), Franklin said in a letter of the 15th⁹⁹ to the French Minister: "I hoped I might have been able to send part of the Aids we have asked, by this safe Vessel. . . . I fear the Congress will be reduced to Despair, when they find that nothing is yet obtained." This seems to have been the proverbial straw that broke the camel's back. "I am at a loss, Sir," wrote Vergennes in reply to this letter, "to explain your conduct, and that of your colleagues on this occasion. You have concluded your preliminary articles without any communication between us, although the instructions from Congress prescribe, that nothing shall be done without the participation of the King. You are about to hold out a certain hope of peace to America, without even informing yourself on the state of the negotiation on our part. . . . I am not desirous of enlarging these reflections; I commit them to your own integrity. When you shall be pleased to relieve my uncertainty, I will entreat the King to enable me to answer your demands." This letter produced a flurry or perhaps it may be said, caused consternation, in the minds of the American commission. They met and decided to furnish an explanation; and, at this time, they were only too glad to accept Dr. Franklin's draft, without suggestion or correction.¹⁰⁰

Omitting the introductory phrases, Franklin, speaking for the commission, replied¹⁰¹ to the French Minister: "Nothing has been agreed in the preliminaries contrary to the interests of France; and no peace is to take place between us and England, till you have concluded yours.

Your observation is, however, apparently just, that, in not consulting you before they were signed, we have been guilty of neglecting a point of *bienséance* [propriety]. But, as this was not from want of respect for the King, whom we all love and honour, we hope it will be excused, and that the great work, which has hitherto been so happily conducted, is so nearly brought to perfection, and is so glorious to his reign, will not be ruined by a single indiscretion of ours." The Doctor then naïvely referred to the matter of money, with which, indeed, he had nervily commenced his letter: "And certainly the whole edifice sinks to the ground immediately, if you refuse on that account to give us any further assistance." He intimated that the ship was not yet dispatched, and that he would wait upon the Minister on Friday for his answer. This was Tuesday. Then expressing his personal views, which he attributed to his countrymen, Franklin added: "It is not possible for any one to be more sensible than I am, of what I and every American owe to the King, for the many and great benefits and favours he has bestowed upon us. All my letters to America are proofs of this; all tending to make the same impressions on the minds of my countrymen, that I felt in my own. And I believe, that no Prince was ever more beloved and respected by his own subjects, than the King is by the people of the United States." He ended with an adroitness which must have caused Vergennes to smile, if he did not laugh outright: "*The English,*" stated Franklin, "*I just now learn, flatter themselves they have already divided us.* I hope this little misunderstanding will therefore be kept a secret, and that they will find themselves totally mistaken."

It had been Vergennes's own proposition that the American commissioners should negotiate separately with Great Britain, and this procedure was suggested on one occasion to Oswald at a time when Franklin was in constant and intimate communication with the French Court. Therefore, it would seem that Franklin's statement was as correct as it was happy, that in negotiating without formal conversations with Vergennes, they were only guilty of a lack of good form—*bienséance*, he called it. As a matter of fact, he had been informed on November 29, that they were to sign on the morrow, and, had he so wished, he might have prevented the signature. The information was at his hand from Franklin, for he acknowledged having received the letter, and doubtless, from his secret service, he knew what the Americans had not communicated. But he did not possess "official" knowledge, which he had reason to expect from the instructions given by Congress to their commissioners in Paris.

The terms of France to Great Britain were moderate; the desire of Spain to obtain Gibraltar would not be considered unreasonable by any country a portion of whose territory was occupied by an alien, and would doubtless have been a condition of a victorious peace imposed by Great Britain if she had occupied Spain's position. But the war in its later phases was not favourable to Britain's enemies. Rodney's crowning victory in the West Indies had made questionable the wisdom of continuing hostilities if reasonable terms of peace could be obtained; and the relief of Gibraltar had confirmed this disposition on the part of France. Therefore, Louis XVI and his Ministers were anxious to termi-

nate the war, but unwilling to desert Spain, their ally. Doubtless Vergennes was pleased to have the Americans off his hands by a treaty of peace satisfactory to them and concluded by them with Great Britain, although he did not relish the abruptness with which France was dropped when it was thought to be no longer useful to the Americans. Vergennes did not approve of the Spanish method of asking much as a preliminary to accepting little. As shrewd a judge of men and events as Livingston felt that Vergennes probably regarded peace with America as in the interest of France. Spain, was persuaded to renounce Gibraltar for the return of Cuba and the Floridas; and France contented itself with a removal of restrictions on the fortifications of Dunkirk, a readjustment of its fishing rights in Newfoundland waters, and certain exchanges of conquests and sundry advantages here and there, of no importance to the present purpose.

The treaty which Great Britain later concluded with Holland, separated from its allies and negotiating in isolation, were such as a victor might care to impose.

The preliminaries with France and Spain on the one hand and Great Britain on the other were signed on January 20, 1783, at which time an armistice was concluded between these countries. At the same date, the American commissioners signed an armistice with Great Britain.¹⁰² On the 3d of September, 1783, the same day as the Americans, but at Versailles instead of Paris—where the Americans signed—the signatures of the belligerents were put to the final treaties.

In reply to the report of the American commission explaining and justifying its conduct, Robert R. Liv-

ingston reprobated their action in his capacity as Secretary of Foreign Affairs. In the course of his official communication to the commissioners under date of March 25, 1783,¹⁰³ after congratulating them upon the success of their efforts, he said: "I feel no little pain at the distrust manifested in the management of it; particularly in signing the treaty without communicating it to the court of Versailles till after the signature, and in concealing the separate article from it even when signed. I have examined, with the most minute attention, all the reasons assigned in your several letters to justify these suspicions. I confess they do not appear to strike me so forcibly as they have done to you; and it gives me pain that the character for candor and fidelity to its engagements which should always characterize a great people should have been impeached thereby. The concealment was, in my opinion, absolutely unnecessary; for, had the court of France disapproved the terms you had made after they had been agreed upon, they could not have acted so absurdly as to counteract you at that late day, and thereby put themselves in the power of an enemy who would certainly betray them and perhaps justify you in making terms for yourselves."¹⁰⁴

It is perhaps a matter of temperament with those who, having considered the negotiations with France, and having read the relevant documents, arise from their examination with a feeling that we owe but little, or on the contrary much to France. Those who consider its intervention to have been dictated solely by its own interests, eliminating from their consideration the matter of sentiment, which, however, plays a greater rôle with our Latin friends than with those of the colder

climes, are sometimes inclined to accept independence as a mere consequence of the desire of France to humiliate England. Those, on the other hand, who recognize that France had an interest in redressing the balance of power in Europe, just as the United States had an interest in being independent in America, are happy that these two interests resulted in the independence of the United States, and are not averse to gratitude to France for serving the cause of America at the same time that it served its own interest. However, those who share the view universally held by historians of our day—that without foreign help independence could not have been had—may well be grateful to France much in the same way as we see in the sun the source of light, even though the erudite inform us that it is not wholly without spots.

In any event, the American commissioners and their countrymen might have said, upon the signing of the preliminary articles (November 30, 1782), upon the signing of the definitive treaty (September 3, 1783), and upon its ratification and proclamation (January 14, 1784),

“The world was all before them, where to choose
Their place of rest, and Providence their guide.”

ROBERT R. LIVINGSTON
SECRETARY FOR FOREIGN AFFAIRS
OF THE CONTINENTAL CONGRESS
AUGUST 10, 1781, TO JUNE 6, 1783

“He did more than anyone in the home government in shaping
its foreign policy.”—*Francis Wharton.*

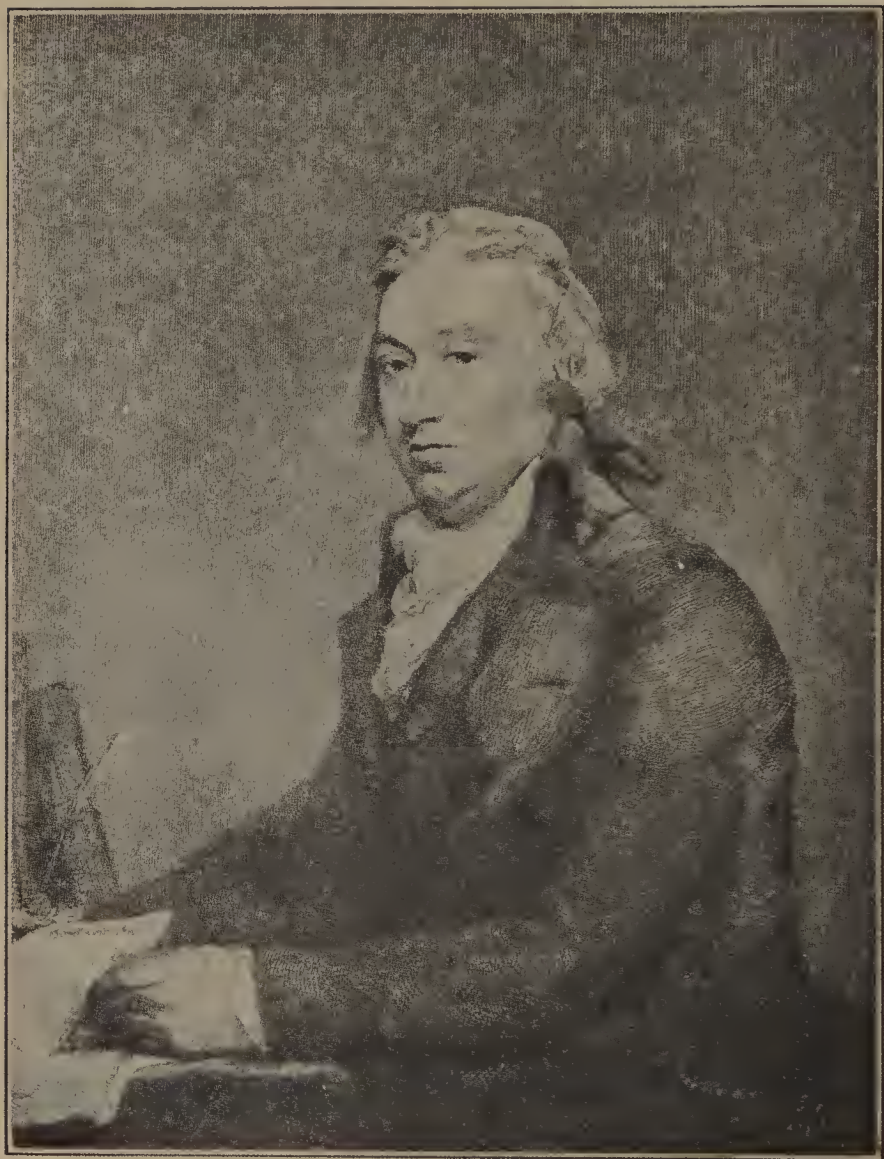
BY

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ROBERT LIVINGSTON

AFTER THE PORTRAIT BY GILBERT STUART.

REPRODUCED BY THE COURTESY OF
JOHN HENRY LIVINGSTON, ESQUIRE,
OF CLERMONT



Robt Th. Swinburn

ROBERT R. LIVINGSTON

CHAPTER I

THE SECRETARY FOR FOREIGN AFFAIRS

AS shown in the preceding pages of this volume, the Continental Congress finally established a Department of Foreign Affairs but for some time it could not agree upon a Secretary. The leading candidates were Arthur Lee and Robert R. Livingston. The latter was elected, August 10, 1781. The Chevalier de la Luzerne, the French minister to the United States, claimed credit for the defeat of Lee as inimical to France, and for the election of Livingston. Lee wrote Samuel Adams that James Duane and Luzerne were responsible for his defeat.¹ At his home, Clermont, on the Hudson, Livingston was not aware of his election until August 23. He requested further information about the position before deciding. Receiving this, he accepted, September 23, made a hasty arrangement of his private affairs and hurried to Philadelphia. He took the oath of office October 20, and plunged at once into the sea of confusion Congress had produced in the foreign correspondence. His was a task calling for exceptional ability and special training. As to the former, it has been fairly said of Livingston: "He added learning to great native ability

and brilliancy to profound thought.”² Let us now see how his previous life had given him the necessary training.

Leving, a Saxon thane, migrated to Scotland about the end of the eleventh century. From his estate—“Leving’s toun”—was derived the patronymic of his descendants. One of these, Sir Alexander Livingston, was (1437) made one of the guardians of the infant King James II. Alexander’s son became the first Baron Livingston of Callendar. From a younger son of the fourth Lord Livingston was descended that Robert Livingston who came to America in 1673 and founded (1686) Livingston Manor, which comprised about 160,000 acres on the east bank of the Hudson, in the present Dutchess and Columbia counties of New York.³ Robert’s grandson, Judge Robert R. Livingston, married Margaret Beekman. Of their eleven children, the second and the eleventh, Robert and Edward,⁴ became famous in both law and diplomacy.

Robert R. Livingston, Junior, was born in New York, November 27, 1746. At fifteen he entered King’s College (now Columbia) where one of his most intimate friends was John Jay of the class of 1764. Of the six senior orators at the next commencement, young Livingston attracted most attention by his address on “Liberty.” “Many of the auditors pleased themselves with the hope that the young orator may prove an able and zealous asserter and defender of the rights of his country.” So recorded a local newspaper.⁵ As this was but three months after the passage of the Stamp Act, it has a prophetic ring.

Admitted to the bar in 1770, for a while Livingston practised with his friend Jay. The year of his admission

to the bar, he married Mary Stevens, of Hunterdon, New Jersey. To this union were born two daughters, each of whom married a cousin, Livingston by name. By a pretty quip of fortune, the two strains are re-united in the present (1925) master and mistress of Clermont. Governor Tryon appointed young Livingston recorder of the city of New York in 1773, the duties of which position he discharged satisfactorily until his well-known "Whig" sentiments caused his removal in 1775. That year Dutchess county elected him a delegate to the provincial convention called to consider the increasing discord between England and the colonies. This convention appointed Livingston, Jay, James Duane, Philip Schuyler, George Clinton and others, delegates to the second Continental Congress. In this body Livingston served 1775-1776, 1779-1780, 1784-1785. The notes of John Adams and the *Journals of Congress* show that during his first period of service Livingston was active in the proceedings of Congress. During the session of 1775 he served on committees appointed to prepare an address to the people of Great Britain, to confer with Generals Washington and Schuyler, to confer with the New York convention relative to the defense of the Hudson, and similar matters. Next year he served on similar committees and many others, of which we may note the committee on ways and means, that to investigate the quality of powder supplied to the government and that to draft a plan of confederation.

It is common knowledge that Livingston was appointed with Jefferson, Adams, Franklin and Roger Sherman to draft the Declaration of Independence. Like several others, Livingston was opposed to such an action *at that time*,

still hoping for reconciliation with the mother country. Under instructions from the provincial convention, the New York delegation in Congress refrained from voting on the adoption of the Declaration. As Livingston had been elected to the provincial congress of 1776, he had to leave Philadelphia shortly after the Declaration was adopted, so his name does not appear on that instrument.⁶ In the New York congress of 1776 he served on the secret committee to obstruct the Hudson. In August he was made a member of the committee of safety, and with its chairman (Hobart) was sent to confer with Washington. He continued to serve in the provincial conventions and congresses, the committee and the council of safety during 1776-1777. He helped draft the first constitution for the state of New York. Among the features for which he was responsible was the council of revision (governor, chancellor and supreme court judges), which had the duty of revising all bills about to be passed by the legislature. With Jay and Gouverneur Morris he served upon the secret committee to examine disaffected persons. When the convention adjourned after adopting the constitution (April, 1777) Livingston was made a member of the commission which carried on the government until the newly-created officials could be elected and installed.

One of the duties of this commission was to co-operate with the Continental Congress and the Continental officers in the state, as well as to supervise the militia. His correspondence with Washington, Schuyler and various members of Congress proves that Livingston was both industrious and capable in this work. In May, 1777, he was elected chancellor of New York, Jay becoming chief

justice. For the next two years Livingston's public services were chiefly those incidental to the chancellorship. The rules for the court of chancery were formulated by him, and one of his successors said that the court "never boasted a more prompt, a more able, a more faithful officer." He continued to assist state and continental officers in numerous ways. One of his brothers, three of his brothers-in-law and innumerable cousins held commissions in the army, from lieutenant to major-general. The Chancellor was himself lieutenant-colonel of "the Manor of Livingston militia." Through his military connections and his civil duties he was brought into intimate contact with Washington, Schuyler, Lafayette, Clinton and other notables of the Revolution.⁷

When Jay was appointed minister to Spain in 1779, the New York convention decided that a special emergency had arisen, which justified its sending the chancellor to take Jay's place in Congress. Livingston took his seat, November 20, and continued in Congress—with various absences to attend to chancery business—until the autumn of 1780. As before, he was an active and useful member of Congress. He served on the ways and means committee, the board of war, and the committee on foreign affairs, which had in great part the direction of the foreign intercourse of the Confederation. Livingston was also frequently appointed on special committees to prepare letters to the American ministers in Europe, to confer with or to receive communications from the French minister, to correspond with the American commissioners in Canada, and the like. He seems to have drafted the reports of numerous committees, notably the resolution adopted by Congress, Decem-

ber 14, 1779, setting forth the financial situation and suggesting methods by which the states might provide adequate funds for the central government. Appropriately he served on the committee to prepare instructions for the court of appeals. These were but a few of his more important tasks.⁸

As lawyer, recorder, member of congress and convention, as chancellor and by service on the foreign affairs committee, Livingston had been trained for his new position. Arriving in Philadelphia, his first step was to secure quarters for his department. The three-storey house, but twelve feet in width, at Number 13 Sixth Street was rented. The ground floor was given over to the clerks' offices; the Secretary used the front room upstairs, the under-secretaries the rest of that floor. When fully organized, the staff included the Secretary for Foreign Affairs, at a salary of \$4000 per annum; Lewis R. Morris, Jr., first under-secretary, \$800; Pierre S. DuPonceau, second under-secretary, \$700; Reverend John P. Tetard, translator, \$500; Walter Stone, clerk, \$500. Two of these merit a word. According to Doniol, Livingston desired a French officer as one of his assistants. Luzerne recommended DuPonceau, who had come over as an aide to Von Steuben, but had recently come to Philadelphia for medical attention. Versed in international law and a skilled linguist, he was of much service. Tetard was an old man, who for his services to the American army in Canada had seen his possessions destroyed by the British. Unable to collect his claims from Congress, he was glad to become an interpreter in the department and to occupy the third floor as a residence.⁹

Securing quarters and selecting a staff was only a small part of departmental organization. Congress as a whole, its President, special committees, the committee on foreign affairs, its chairman or some zealous member, all had taken a hand in conducting the diplomatic relations of the infant nation. No one person had been continually in charge; no individual had been responsible for the custody of the papers pertaining to the Department. Though enumerating his duties, the act establishing the office had said little about the powers of the Secretary, so a multitude of details had to be worked out. Even the staff had to be assembled piecemeal, as the act allowed for one or more clerks, but did not provide for their rank, duties or pay. Nor was the Secretary allowed a free hand in the conduct of foreign affairs. Wharton pertinently observes:

“Singularly able and accomplished as Livingston was, he never was intrusted with those initiative diplomatic powers which in England, and now under the Constitution of the United States are confided to the department having charge of foreign affairs. Congress continued to pass resolutions directing the policy foreign ministers were to pursue. . . . Congress also held frequent interviews with the minister of France, in which there was what was called a free interchange of thought, ending in expressions by which the Confederation was more or less committed.”¹⁰

The same authority felicitously characterized this as “militia diplomacy,” growing out of the fear of “executivism,” then rampant in Congress and the states. The new Secretary, however, did not favor this “system of

unsophisticated impulse," preferring that sanctioned by custom and international law.

The day he took office Livingston wrote Franklin, informing him of his appointment and requesting co-operation. After relating the latest military and political news, he urged Franklin to keep him informed of all that passed abroad, while he promised to keep the ministers posted as to events in America. Again and again he urged the American representatives abroad to send frequent, regular and minute accounts of the political, military, economic and social institutions of the countries of their residence, with intimate facts about the personalities of all people of note whom they met. His own letters, he said, would be of two kinds; those submitted to and formally approved by Congress, and those not so submitted, but written in consonance with the views of Congress. To General Greene, he wrote that Congress having made it his duty to collect and transmit all such intelligence as might be useful to the American representatives abroad, he asked the General's co-operation for that purpose. Likewise, that first day, he wrote a very diplomatic note to the French Foreign Minister, Vergennes, announcing his appointment and requesting the aid of that official.¹¹

Considering the fact that with his small staff he had to send from three to seven copies of every dispatch, the number and length of Livingston's letters is amazing. With the first copy of a dispatch was sent a duplicate of the preceding one, in case all those sent previously had been lost. To add to this labor, frequently parts, sometimes whole dispatches were in cipher. There were several ciphers, which were sometimes changed. Not all

have come down to us, so to this day there are portions of the diplomatic correspondence of the Revolution the import of which we must deduce from the context, or from passages in dispatches to others than the addressees, or from an occasional deciphered copy among the papers of the recipients. Another factor must be kept in mind in estimating the magnitude of Livingston's difficulties. Today, the American minister at, say Stockholm, can send an inquiry to Washington and receive the answer within the hour; in 1781 it took from six weeks to nine months merely to get the inquiry across. When Livingston received a dispatch he never knew whether a copy had been intercepted by the enemy. In fact everyone of the important dispatches from France were so intercepted. One dated December 10 might arrive ahead of that of November 20 from the same person, while that of December 1 might never arrive. Time after time, Secretary and ministers reproach each other for not writing, when probably five to ten letters were *en route* in each direction. Even from Philadelphia to South Carolina sometimes six weeks was needed to transport a dispatch.

Livingston's first communication to Congress was a request, October 29, to be permitted to examine the books and papers in the custody of the secretary of Congress, and to copy such portions as related to his department. This eminently proper request was granted. After his induction into office, the first reference to his department in the journals of Congress is an order for Livingston to notify Luzerne of the surrender of Cornwallis. The shrewdness displayed in conducting the office is revealed by the following incident. Acknowledging

receipt of a resolution of Congress directing the erection of a monument at Yorktown, Luzerne took exception to the fact that Congress was mentioned before Louis XVI and requested Livingston to let him know "distinctly what usage Congress intend[ed] to adopt." In tactful language Livingston replied that Congress had no fixed rule, it having been regardless of form and ceremony; but certainly the case in point was not indicative of any disrespect for the king. The Secretary then advised Congress that by seeming to slight mere matters of ceremony they might avoid troublesome discussions and "teach the old world by the example of the new to get rid of a clog which too often fetters the most important transactions." He suggested that in future documents Congress should alternate the order of the names of the king and itself.¹²

A communication of November 18, 1781, reveals Livingston's business acumen. Reminding Congress that Franklin had warned Adams he could expect no more money from France for America, Livingston observed:

"Congress need no arguments to convince them of the disgrace and danger of permitting their most confidential servants to be necessitous in a foreign country. I will, with their approbation, concert with the Superintendent of Finance the means of supplying our ministers, agents and secretaries. But to facilitate these means and to convince the Powers, to whom we are indebted for money, that we know the value of their aids, I would humbly submit to Congress the propriety of practicing the strictest economy as far as may be consistent with their honor and the justice due to those they employ."

As a measure of economy, he went on to suggest the replacing of secretaries of legation by private secretaries at smaller salaries, and declared that it was improper to solicit courts that were indisposed to respond to overtures, or to expend money on missions to such countries.¹³

After three months' experience Livingston felt obliged to point out some faults in the act establishing his department and to suggest remedies. First, the Secretary should have an intimate and confidential knowledge of the sentiments of Congress, which could not be obtained from their public acts. While he was permitted to attend Congress, as the debates were seldom confined to the points upon which he needed light, he wished leave to ask questions and to express his views when his reports were being discussed. He asked authority for continuing to look after matters of too little moment to bring before Congress, such as claims for redress of Americans abroad. Some attention, too, was necessary to matters of form and ceremony "to enable us to avail ourselves of the advantages they sometimes afford in creating useful delays and concealing for political reasons the views of the sovereign"—not quite the same view he had expressed to Luzerne. Furthermore, he needed more clerical assistance, especially an interpreter.

These demands were referred to a committee, which after an inspection of the Department, reported that the Secretary for Foreign Affairs kept twelve books for letters to ministers, resolutions, instructions and other matters sent out, and had arranged the papers received in nine boxes. The committee recommended a few reforms, undoubtedly suggested by Livingston, which after some debate were adopted. The Secretary was given

broader powers of communication and correspondence, more freedom in initiating discussion and getting replies from Congress, with complete access to its papers. He was directed to secure from the American ministers complete and particular data about the countries of their residence, and was notified that all applications from foreigners for the attention of Congress must come through his office. Congress authorized him to concert with the officials of foreign powers for the redress of grievances. All important letters, treaties, *et cetera*, after being agreed to in substance, by Congress, should be reduced to form by the Department, but must be submitted to Congress for final approval.¹⁴

For the benefit of the Department of Finance, Livingston made out a statement of the annual needs of his own Department, including expenses of American envoys abroad. "Justice," he told Congress, "suggests that the salaries of officers who are engaged in so delicate and difficult a department . . . should have such appointments as to free them from embarrassment with respect to their private affairs." He thought the salaries then paid were adequate, unless it was that of Jay, since living was more expensive in Spain. In the light of what other nations paid he believed the salaries of the secretaries of legation twice too large. He recommended changing the minister to Russia to a resident [*sic*] at a lower salary; that in future no secretary of legation at a northern court receive over \$1000; those in Spain, France and the Netherlands, \$2000; after January 1, 1783, salaries of ministers should not exceed \$5000, residents \$3000, but that allowances should be made for household expenses. The annual expenses of the De-

partment, he thought, could be kept within \$65,000. Nothing definite was done with this report until just before Livingston left office, when it was declared the Secretary's duty to lay before Congress, from time to time, plans for conducting the political and commercial intercourse of the country. Each minister was to be allowed \$8000 a year for salary and all expenses except postage and the purchase of public prints and newspapers. The minister was to be consul-general in the country to which accredited and was to supervise all other consular officers therein. Consuls, who were to be paid only by fees, might engage in trade, but ministers were debarred absolutely. A secretary of legation should be entitled to \$1000 and a place in the house and at the table of the minister. Livingston was directed to draft an ordinance for the regulation of consular powers and privileges, with a convention to be entered into with other nations for the exchange of consuls. These new regulations came too late to affect Livingston's conduct of the Department, but they had grown out of his advice and urging.

Congress decided, in January, 1782, that each January and July committees of five should inspect the various departments. That appointed for the Department of Foreign Affairs reported in September of that year that it had carefully examined into the conduct of the Department from its inception to July 1. The committee found that fourteen letters had been written to the minister at Versailles, ten to Madrid, eight to The Hague, five to St. Petersburg, thirteen to secretaries of legation, consuls and other agents. These consisted mainly of political and military news, suggestions as to

the conduct of the recipients, resolutions and instructions of Congress, and requests for detailed information from abroad. Thirteen other letters had been written to Franklin concerning the cases of foreigners, and other miscellaneous matters. Five circulars had been sent the governors of the states on such matters as consular conventions, the birth of the Dauphin, *et cetera*. To some governors other letters had been sent on matters of special concern to their states. The Department still had nine boxes of papers received, while the letter-books had been increased by one. "It appeared to the committee that . . . a proper attention [had] been given to the custody and arrangement of the books and papers. . . . Upon the whole, the committee report[ed] that the business of this department appear[ed] to have been conducted with much industry, attention and utility and without any errors or defects worthy of being taken notice of to Congress." The following November Congress authorized the Secretary to communicate to foreign ministers resident in Philadelphia all such acts and resolutions of Congress, and all such articles of intelligence received by Congress as he [might] judge proper, except those which Congress specifically directed to be kept secret. Another committee of inspection was appointed in January, 1783, and discharged in July, but its report has not been found.¹⁵

The journals of Congress abound in directions to the Secretary for the transaction of routine duties, such as notifying the French minister that Congress wished to present Rochambeau with some of the cannon captured at Yorktown; to prepare a draft of a letter to a European potentate; to draft a memorial concerning prize

money; to plan a ceremonial for receiving Luzerne to announce the birth of the Dauphin; to notify governors and military commanders of a treaty; to prepare a proclamation, and so on. After he had planned the audience for Luzerne, even to writing the speech of the President of Congress, Livingston learned that the British were trying to induce the belief that harmony did not prevail between France and the United States. So the day of the audience he urged the President to add to his response a paragraph emphasizing the cordiality of Franco-American relations. The minutes for the day show that President John Hanson concluded his remarks with the very words suggested by Livingston.

Out of this audience grew an incident which demonstrated that Livingston had a proper sense of official dignity and knew how to enforce respect for it. Congress had directed him to take charge of a banquet in Luzerne's honor, to which he should invite those generals and the foreigners of distinction in town whom the President should designate. Livingston declined this task because it would materially interfere with the business of his office. Charles Thomson, the efficient secretary of Congress, was then deputed to persuade Livingston to reconsider. To him Livingston said frankly that he would not demean himself or his office by acting as caterer for a party at which he was not even a guest, from which were excluded the field officers on the staffs of the generals, former members of Congress, the heads of the executive departments and the president and council of Pennsylvania. Congress promptly corrected its journals to read that the Secretary for Foreign Affairs should invite, in the name of Congress, the heads of the depart-

ments, the president and council of Pennsylvania and such other persons as he might think proper. The seating plan of the banquet shows that Livingston, as master of ceremonies, was seated opposite the President. Much ado about nothing? Yes and no. Livingston was quite correct in feeling that foreigners would not understand a cabinet minister's acting as butler at an entertainment for others; that all distinguished persons not invited would blame him, and most particularly, Congress itself, if he yielded this point, would feel less respect for his department and him. By taking the stand he did, he served effectual notice upon Congress that neither the department nor its secretary was to be treated with contempt.¹⁶

Ebenezer Hazard, the Postmaster-General, said in February, 1783, that he had no funds for departmental mail unless it were marked "public business." Livingston told Congress he felt sure that it never intended its officers to pay postage on official mail, especially that sent from Europe by persons who could not know of Hazard's construction, "to say nothing of the ill policy of distinguishing public from private letters when conveyed by the common post." Congress perceived the reasonableness of this contention and ruled that all letters from the departments marked "free," and *all* to them, were to be delivered, leaving it to the departments to account for such as they found not to be free, according to the spirit of the ordinance.

A week later the Secretary pleaded for co-operation in these moving terms:

"I take the liberty to remind Congress that a variety of matters which have been submitted by me

remain yet undecided, and that the business of the office is very much obstructed as well by this delay as by the detention of the letters and papers which refer to them. As this has probably been occasioned by a change in the committees, I humbly submit to Congress the propriety of directing them to be filled up.”¹⁷

This was neither the first nor the last time such an appeal had to be made.

Communicating congressional resolutions was a large part of Livingston's official business with the states. His first circular letter was that of November 17, 1781, requesting authenticated returns of the damage wrought by the British, for transmission to the peace commissioners. The consular convention with France called forth another, urging the states to pass the necessary laws to make it effective. This was followed by one discussing the attitudes of Spain and the Netherlands towards the war, and urging the states to prepare for a vigorous campaign. Of course the birth of the Dauphin necessitated a letter suggesting that each state take appropriate notice of this event. Some governors responded with resolutions adopted by their legislatures, others wrote personal responses, others preserved a stubborn silence. Livingston's circulars were forceful but tactful. Apparently his last was that of April 12, 1783, announcing the cessation of hostilities. It concluded: "I need not, I am persuaded, sir, use any arguments to urge your excellency and the State over which you preside to the most scrupulous attention to the execution of every stipulation in our treaty which may depend on you or them. A national character is now to be acquired.

I venture to hope that it will be worthy of the struggles by which we became a nation."

Besides these circulars he had occasion to address some governors on matters of special interest to them, such as forwarding to the governor of South Carolina mail from Cadiz, or reminding the governor of Pennsylvania that his state had not complied with the request of Congress to pass laws in conformity with the commercial treaty with France. Of the governor of New Hampshire, Livingston mildly inquired if his excellency had received the three previous letters addressed to him.¹⁸

From time to time Livingston transmitted to the military and naval commanders certain documents of Congress; answered queries from them and sought information of them. Though he must have had much intercourse with General Benjamin Lincoln, the Secretary at War, most of it seems to have been oral, as the present writer has found no letter between these two. By direction of Congress Livingston wrote Captain John Paul Jones for data about the prize money due the crew of the *Bon Homme Richard*. Congress also had him notify Washington and Greene of the birth of the Dauphin so that they and their troops "should partake in this pleasure." The commanders were to publish the news to their armies with such demonstrations of joy as they saw fit. Accounts of these factitious rejoicings must needs be sent to France. Washington wrote Livingston in January, 1783, that he was skeptical of peace, so the country should prepare energetically for the next campaign. If Jefferson had been appointed a peace commissioner, Washington confided to Livingston, he hoped Jefferson

would arrive too late to participate in the negotiations.¹⁹ The same month Washington sent Congress plans for this active campaign. Livingston was then directed to inform Washington, in confidence, the status of the peace negotiations, which, in the opinion of Congress rendered it inexpedient to enter upon expensive preparations for a campaign.

Luzerne received in March, 1783, dispatches from the Comte d'Estaing, recalling French cruisers to prevent further bloodshed, while Livingston had notice from LaFayette of the signing of the peace preliminaries. He sent properly attested copies of these to General Carleton and Admiral Digby, commanding the British forces at New York, saying frankly that these papers were not official proof of an armistice, but he presumed the British commanders' humanity would induce them to take measures to prevent useless bloodshed. Upon this principle, he said, Congress had passed the inclosed resolution directing the agent of marine to recall all armed vessels cruising under commissions from Congress. The British officers replied curtly that *they* must await official notice from England, but suggesting that *Congress* release British prisoners at once! As he had suggested the orders to the agent of marine, Livingston now urged Congress to revoke them. The minutes are silent upon this point, but Madison's journal informs us that, being unwilling to publish the affront to itself, Congress finally decided that any member might privately send copies of the British officers' letters to the press! Within a week Carleton and Digby wrote Livingston that they had received the King's proclamation of an armistice, and requested that Congress urge, in accordance with

the preliminary treaty, that the state legislatures provide for the restoration of confiscated Loyalist estates. It is noteworthy that Livingston, as a member of the council of revision, had for a time prevented the passage of a confiscation act in New York. Later it was enacted over the veto of the council.

Upon receipt of these dispatches the Secretary sent Congress drafts of a resolution for the release of prisoners and a proclamation for the suspension of hostilities. To Carleton he wrote that Congress, "without entertaining doubts of [the] authenticity [of Carleton's information] or yielding to suspicions that would tend to prolong the calamities of war," would take the earliest opportunity to comply with the treaty. "It must be obvious," he observed, "that a recommendation to restore to the Loyalists the estates they have forfeited will come with less weight before legislatures composed of men whose property is still withheld from them by the continuance of [British] armies and fleets in this country than it will do when peace and the full enjoyment of their rights shall have worn down those asperities which have grown out of eight years' war." So he suggested that Carleton hasten the departure of the British forces.²⁰

Next to Washington the man who suffered most from the ineptitude of Congress was Robert Morris, the able and patriotic Superintendent of Finance. A good business man himself, Livingston readily appreciated and sympathized with Morris's difficulties. Whenever he could, in his dealings with Congress, the states and Europe, he sought to aid Morris in his efforts to procure and save money. A month after entering office he pointed out to Franklin that it was to France's interest to ad-

vance money to America to prevent the collapse of public credit and the dissolution of the army; that the resources of the country were ample security for the debt, while aid from France to a smaller amount than one year's cost of war would stabilize things in America and shorten the war. He showed that it would be good economy for France to keep a fleet in American waters, since it would force England to maintain an equal force at a greater cost, and by taking men and ships from their merchant marine. The protection afforded American commerce would redound to the advantage of both France and America at the expense of England. Similarly, he wrote Jay that want of money was the radical evil in America and would so remain until relieved by foreign aid. "Let this be ever in your mind, never cease to persuade the [Spanish] ministry that this money can nowhere be put to better interest than in America." Jay was instructed to say to the Court that though the United States was without ready money, its resources were abundant, whence it would be good finance for Spain by aids of ships and money to shorten the war by blasting England's hope of recovering America. Or, if Spain wished to exhaust Britain by prolonging the war, it could be done more cheaply in America, as France had found it could maintain an army there at a third of what it cost Britain. "If this is a war of finance, Britain is most vulnerable in America." Jay should suggest that a few Spanish frigates as convoys would enable Spain to provision its army in Cuba cheaply from the United States. The Spanish funds in Havana could not be sent to Europe except at great risk and expense, but could be easily taken to the United States

and invested to great advantage in European bills, thus affording France a market for its bills, Spain a cheap and easy way of bringing its money home, the United States a supply of ready money and consequent capacity to tax with advantage. Unfortunately for Jay, Morris, Livingston and the country, Spain was deaf to such arguments.

One of the first financial matters referred to Livingston was the correspondence with DeNeufville and Sons, of Amsterdam, who had made purchases for the United States at the request of Henry Laurens. Informing them that Morris would settle their accounts, Livingston conveyed very shrewdly the gratitude of America at receiving aid from such a gallant people as the Dutch, who had distinguished themselves "from Caesar's days to the last war." He showed the advantage accruing to those nations who made themselves popular in America while British manufactures were excluded.

Franklin, after a conference with Vergennes, wrote that the Congressional habit of drawing bills on its ministers was very embarrassing to them, so he urged that part of the last loan he had negotiated be used to take up the outstanding bills. Livingston conferred with Morris, then proposed that all money held anywhere to the credit of the United States be put under the management of Morris, subject to appropriation by Congress. This sensible suggestion was adopted the same day.

At the request of Luzerne or Franklin, Livingston often approached Morris about loans and claims, and transmitted his replies. To an inquiry of Luzerne's about American obligations held by Frenchmen, Morris said that until the states paid in the fund requisitioned by

Congress to defray principal and interest of the public debt, he could pay neither. With a copy of this reply, Livingston wrote Luzerne: "I am sorry for the necessity . . . and look forward with some degree of impatience to the period when ample justice shall be done to all the public creditors. In the meanwhile, foreigners will not feel themselves hurt when we make no distinction between them and our own citizens."

One of Livingston's last official acts was to send Joseph Nourse, register of the treasury, a summary of the documents in the foreign office relating to money received from France, Spain and the Netherlands.²¹ This incident fittingly concludes what may be termed the domestic phase of Livingston's conduct of the Department of Foreign Affairs.

CHAPTER II

FRANCO-AMERICAN RELATIONS

OF the genuinely foreign aspects of Livingston's administration, the relations with France were of course the most important. Throughout Livingston's tenure of office Franklin was minister to France, Luzerne to the United States. We have seen that the latter claimed to have procured Livingston's election. If he fancied he dominated Livingston, he was mistaken, though the relations between the two were cordial and satisfactory, as was the case with Livingston and Franklin. Because of his presence in Philadelphia, much of Luzerne's intercourse with Livingston was oral, its purport has to be deduced by reading between the lines of departmental, official French, and personal papers. Obviously much of the business with France at this time dealt with finance and the peace negotiations which are discussed elsewhere in this monograph.²²

Because of the great esteem in which Franklin was held throughout Europe, nations which had not yet recognized the United States would ask the French Government to approach Franklin concerning any matter they might wish to discuss with the United States. For instance, the Danish Government appealed to Vergennes to make representations to Franklin about the destruction, in Danish waters, of British ships by American privateers. Livingston directed Franklin to say that the matter would be investigated, adding: "I should be glad to know on what principle these applications are

made to the court of France. If the Powers who suppose themselves injured consider us as the subjects of Great Britain, they should carry their complaints to the Court of St. James. If they consider us independent of them [*sic*], they should address themselves to us or to you directly." Franklin agreed with this dictum and said he would receive no more such representations, justifying his refusals by quoting Livingston's reasons.

Since the admiralty courts in the French West Indies seemed ignorant of the act of Congress vesting in the captors title to enemy ships taken by American privateers, Livingston thought Luzerne should enlighten the proper officials. For this purpose he sent copies of the act in question, as it would, he thought, be disastrous to both nations to have divergent opinions in the different ports as to what constituted lawful prizes. If the French court did not feel warranted in condemning the vessels they should at least restore them to the captors to bring to an American port. Luzerne promptly forwarded these documents to the French commandant and advised him to let the resolution of Congress guide the admiralty courts in similar cases. In turn, when Luzerne presented Livingston with petitions from French and Austrian subjects, he met with an equally courteous response. One case involved title to supposed enemy ships which had changed hands so often as to obscure their ownership, but had been adjudged to some Americans by the prize court. Chancellor Livingston promptly perceived the principles of equity involved, so Secretary Livingston advised Congress to order a rehearing. With unusual promptitude that dilatory body followed this advice.

Sometimes Congress ordered Livingston to discuss military problems with Luzerne, such as the project to utilize Vaudreuil's squadron, then (August, 1782) in American waters, for a joint attack upon Bermuda. Livingston pointed out forcibly the expediency and practicability of the plan, showing the value of the islands to both France and the United States. Luzerne, however, preferred to shift the responsibility for the decision to Vaudreuil and Washington.

When Luzerne complained that the admiralty courts of Massachusetts had no marshals, or that Pennsylvania had not passed laws suggested by Congress for the protection of the property of French subjects, Livingston could only assure him that he had taken steps to procure these measures, and to urge the states to pass the necessary laws.

After Yorktown Lafayette asked leave of absence to visit France, which was readily granted with complimentary resolutions. Morris was told to supply him with a proper conveyance, and Morris, Lincoln and Livingston were directed to furnish him with such information as might assist him in conference with Vergennes and the American ministers in Europe. Livingston seized this opportunity to send the ministers summaries of the situation in America, which they were to amplify by conversations with LaFayette, whom they were told to consult freely and to utilize in their negotiations. The Marquis bore a letter from Congress to Louis XVI, which, of course, had been written by Livingston.

Often Luzerne gave Livingston orally the substance of dispatches he had received from Vergennes, and Livingston wrote a digest of the interview for Congress.

Sometimes Luzerne preferred to appear before Congress or one of its committees. The reply to such a communication might be made directly by Congress, or a committee, or through Livingston, who was naturally much hampered by such irregularities.

With every dispatch to Franklin (as to other ministers) Livingston sent a bundle of newspapers and requested European ones in return, as well as court calendars, gazettes and other publications that might aid Congress. Transmitting a resolution of Congress concerning the exclusion of British goods, Livingston demonstrated that prize goods sent from France to America might be confiscated unless properly certified; otherwise much British merchandise might be smuggled in as "prize goods." Livingston suggested a method of certification, which he requested both Franklin and Luzerne to urge upon the French court. Within five months after Livingston penned his dispatch, a decree was issued directing just such certification as he had suggested. Whether Franklin or Luzerne secured its adoption, Livingston's was the mind that planned it. Generally, when Congress instructed Franklin to present any matter to Vergennes, it directed Livingston to inform Luzerne of it. If Congress neglected to do this, Livingston took the responsibility upon himself, lest Vergennes feel that Congress lacked confidence in Luzerne. In such cases Luzerne was asked to put the document in cipher before forwarding it.

To Franklin, Livingston indicated one of his difficulties by writing: "We are still in the dark with respect to European intelligence, not having heard from any gentleman in public character" in over three months.

In many letters he showed his humiliation at having continually to direct Franklin to seek new loans of France, and his sympathy with Franklin's embarrassment in so doing. He displayed a clear grasp of the relative significance of a victory in America and in Europe, with the need of close co-operation between the allies. Again and again he commended to Franklin's attention American soldiers and sailors in British jails. Both that tender-hearted philosopher and Laurens did what they could for these unfortunates by doles of money and efforts to procure exchanges. Franklin sometimes received Livingston's dispatches for three months all together. Thus in May, 1782, he received at once Morris's statement of American commerce and the letter of Congress [Livingston] on the birth of the Dauphin. This, he said, was very well received in France. Morris's statement was laid before Vergennes with a request for immediate consideration.

When it seemed needful, Livingston did not hesitate to rebuke even those whom he liked and admired. To Franklin, in September, 1782, he said:

"It is commonly said that republics are better informed than monarchs of the state of their foreign affairs and that they insist upon a greater degree of vigilance and punctuality in their ministers. We, on the contrary, seem to have adopted a new system. The ignorance in which we are kept of every interesting event renders it impossible for the sovereign to instruct their [*sic*] servant, and of course, forms [the ministers] into an independent privy council for the direction of [the sovereign's] affairs without [his]

advice or concurrence. I can hardly express to you what I feel on this occasion. I blush when I meet a member of Congress who inquires into what is passing in Europe. When the General applies to me for advice on the same subject, which must regulate his movements, I am compelled to inform him that we have no intelligence but what he has seen in the papers. . . . But let me dismiss a subject which gives me so much pain, in the hope that we shall in future have no further cause of complaint.”

To this Franklin sent a calm and courteous reply, showing convincingly how the distance of the ministers from the seaports and the uncertainties of wartime delayed their numerous dispatches.²³

CHAPTER III

SPAIN AND PORTUGAL

SPAIN had entered the war (June, 1779) against England not as an ally of the United States, but of France. Its object was the recovery of Gibraltar, Florida, *et cetera*, not the independence of the United States. Hence while Spanish and American agents had some intercourse, Chapman says truly: "The general relations of the two governments cannot be said to have been cordial . . . and at no time was there anything approaching a veritable alliance." Don Juan de Mirales arrived in Philadelphia in 1778, on what has been called "a mission of inquiry." He informed Congress that he was "commissioned with sufficient authority" by the Captain-General of Cuba, under orders from Madrid, "to instruct and represent to the honorable Continental Congress" concerning matters of moment to both. Though he had informal conferences with some committees of Congress, with Jay, the French minister and other prominent men, his communications with Congress were mainly through the representative of France. While visiting Washington's camp as Spanish observer, Mirales met his death. When Livingston became Secretary, Don Francisco Rendon had appeared as Mirales's successor. He was not a regularly accredited agent and was never received by Congress, though in a note to Luzerne he signed himself "*encargado de negocios*" for the Court of Spain. Spain had contributed

a million livres to the original secret fund raised by Vergennes for the United States and had permitted the secret issue of arms to American agents at Havana, New Orleans and other points. Arthur Lee, sent as minister to Spain in 1777, had never been received and soon left the country. John Jay was appointed minister in 1779. William Carmichael of Maryland, a former member of Congress who had already had secretarial experience in Europe, was secretary to Jay. Not only did he perform the routine duties of his post, but kept up a steady correspondence with the other American agents in Europe and with Congress and Livingston. Though Livingston had some correspondence with Jay—some of which seems to have been intercepted and suppressed by the Spanish Government—actually he had little directing influence on Jay's Spanish mission, for Jay left Madrid in May, 1782, to participate in the peace negotiations.

Both the principal Spanish Minister, the Count of Floridablanca, and his under-secretary, del Campo, played an exasperating game of evasion and procrastination with Jay, who behaved with great dignity and self-control. All he succeeded in doing was to borrow about \$150,000 from the Spanish Government. As Spain would not recognize the United States, Jay was never presented at Court, though he had much correspondence and many interviews with the Ministers. Carmichael, sent ahead when Jay reached Cadiz, had been presented to Carlos III as a private individual, so Jay encouraged him to attend court functions to make acquaintances and glean information.

The first of Jay's letters to demand Livingston's

attention was one of April 25, 1781, recounting his efforts to date, his rebuffs and giving his sane views as to the proper course for the United States to pursue towards Spain. As Congress had replied to this letter, though not so completely as Livingston would have wished, when he wrote in November, he forbore comment until he had familiarized himself with the Spanish situation. Whether Spain wished peace or war, Livingston wrote in February, 1782, it was to her interest to press the enemy where he was most vulnerable and where Spain could do it at least expense to herself. "It has been acknowledged in the British House of Commons," he said, "that every man in America costs [Britain] annually one hundred pounds sterling."

Rendon asked, the next month, for information on various topics. Should Livingston refuse to deal with him, as he had presented no credentials, and so risk offending Spain? Or should he waive technicalities, treat Rendon as a diplomat and thereby incur Spanish contempt? This dilemma puzzled the Secretary not at all. He treated Rendon with unexceptionable courtesy, but kept him at arm's length, telling him only what he would have been willing to put into the newspapers. After giving such political, military and economic data as he thought expedient, Livingston commented on how advantageous American trade would be to Spain, especially to its West Indian colonies. American trade would consist principally of naval stores, masts, fish, fur, iron, tobacco, in return for almost every kind of Spanish manufacture and produce. Spain would be permitted either to purchase ships in the United States or to have them constructed there under its own supervision, and

armed from the recently erected iron foundries, which needed only a little encouragement to become flourishing. As to what Congress would claim as the boundary of Georgia, should Spain recapture Florida, Livingston declared that question must be "referred to a general treaty and is of such nature as not to be properly answered here."

In both correspondence and conversation Jay steadily and firmly insisted that the Mississippi should be the boundary between the United States and Louisiana, with navigation free to both Americans and Spaniards throughout its course. Floridablanca maintained that Spain must control the entire Gulf Coast, so American navigation must terminate with the northern boundary of West Florida.²⁴ Jay remained firm. Congress, however, in February, 1781, passed a resolution authorizing him to relinquish the claim to the navigation of the lower reaches of the river, in return for a Spanish alliance and recognition of American independence. Having inspected his mail, the Spanish officials knew of this before Jay did, so waited for him to propose it. The French ambassador, Montmorin, suggested to Jay that Floridablanca was expecting concessions, so after much fruitless jockeying, Jay submitted the heads of a treaty in which navigation below the Florida line was ceded. He took the responsibility of saying that unless these proposals were accepted promptly they would be withdrawn. Nothing definite had been done by October, when Jay sent Congress a summary of his negotiations since the previous January (1781). Livingston received this the following March and merely expressed approval of Jay's course while waiting for Congress to decide upon the issues raised by Jay's letter. When Congress

appeared upon the eve of a decision, late in April, Livingston indited a dispatch, the tone of which seems to hope that the Spanish officials would intercept it. He began: "You will judge how far it may be expedient to ground demands on the right we have to a compensation for our share of the burthen and expense of the war. . . . Our strength is so much underrated in Europe that you will find it proper to represent it as it really is." After giving details as to the size, equipment and discipline of the army and militia, he continued: "I have the honor to enclose an important resolution, which I fear to put in cipher, both because you seem to be at a loss about your cipher and because it would be of little use, considering the accident which you say has happened to it." The resolution was not passed for some days yet, which illustrates why so many inclosures in the Revolutionary correspondence bear later dates than the covering letters.

This particular resolution entirely approved Jay's conduct, including his limitation upon the offer to yield navigation of the Mississippi. "As every day which the proposed treaty is delayed detracts from the obligation and inducement of the United States to adhere to their overture," Jay was instructed to say such delay obligated Spain to greater liberality, so he was to make every effort to obtain either more loans, the right to navigate the lower Mississippi, or special commercial privileges in the Spanish colonies. Jay could as well have asked for all: Spain would grant none.

About the same time Livingston wrote another letter, couched in such terms that if it had been intercepted Spain could hardly take offense, but might perceive

that however patient Congress might be, the American people were becoming restive. Jay's fear that Spain wished to await a general peace before making a treaty with the United States gave Livingston the opportunity to point out that at such a conference Spain could expect fruits of victory only in proportion to its contributions to the common cause. He showed how Spain had benefited by American hostility to England, how consequently it was morally bound to assist the United States. To Floridablanca's hint that Spain would expect repayment of funds she advanced to the United States, Livingston replied: "Whatever claims we might set up to a subsidy from the share we take in the burthen of the war and the utility of our exertions in the common cause, we are far from wishing to lay ourselves under any pecuniary obligations for a longer term than is absolutely necessary. A few years of peace will enable us to repay, with interest, any sums which our present necessities compel us to borrow."

Jay had received but one of all of Livingston's letters of November and December, when he wrote in February, 1782, that Floridablanca was continuing his policy of delay. Jay saw no reason to expect any pecuniary aid from Spain and feared he should have to let some of the drafts of Congress go to protest—which he was later compelled to do, to the amount of about \$25,000. In his opinion, his recall should be the result of deliberate policy, rather than of pique. It might be well for him to consult Franklin and Adams, so he suggested that he be given leave to visit Paris or The Hague. Livingston replied that Congress was unwilling to grant leave at present²⁵ and Jay must remember the delicate

relations between France and Spain. Nor should he give any handle to the British party at the Spanish court, wherefore Jay should move slowly in demanding categorical replies to his proposals.

Jay's last important dispatch from Spain was written late in April (1782) and contained a résumé of his negotiations and embarrassments since September, 1781. Floridablanca had declined to present him to the king as the American minister, and Jay had refused to go to Court as a stranger of distinction. Though sent by special courier, this letter did not reach Livingston until August, 1782. Congress, he told Jay, was so incensed at the slights and neglect its minister had experienced that many members wished to break off all intercourse with Spain. After prolonged discussion, Jay was directed to refuse any propositions from Spain for a treaty until he should have submitted them to Congress, unless it were a treaty requiring immediate accession to fulfil American obligations to France. In that case he might sign at once. Whenever the state of his health might require it, he was authorized to leave Spain for any other part of Europe. He was to forbear making any overtures to Spain or entering into any agreement in consequence of overtures already made. Livingston had urged Congress to give Jay leave to quit Spain at discretion. Franklin already had summoned him to Paris to assist in the peace negotiations, for which Jay had full powers. This solved that problem, and Jay reached Paris late in June. Carmichael, left as chargé d'affaires, was subjected to the same delays and evasions which had harassed Jay.

When Spanish forces captured Pensacola in May, 1781, the surrendered British garrison was permitted to

go to New York. This led Congress to send Jay a protest. Similar terms were granted the garrison of the Bahamas in the spring of 1782, and Livingston sent another indignant remonstrance. Two weeks later he wrote that his fears about the destination of the garrison were correct. The matter should be laid before the Spanish Court.

Just before leaving Madrid, Jay was informed that the Spanish ambassador to France, Aranda, had been authorized to negotiate a treaty with him. Aranda soon approached Jay, who declined to treat without an exchange of credentials, which Aranda evaded. He suggested in informal conversations that the western boundary of the United States should be nearer the Alleghanies than the Mississippi. This Jay emphatically repudiated. He insisted on the river as the natural and logical frontier. Aranda continued to beseech Jay to treat, at the same time avoiding a display of his credentials. So Livingston wrote in December: "I am far from regretting that [Aranda] has no powers to treat. We think with you that it is time to adopt the Spanish system, and to retort upon them all the delays we can interpose, without descending to the contemptible shifts they have put in practise." Next spring Aranda told Jay that the Spanish Court wished Jay to return to Madrid to negotiate a treaty. Though the suggestion was repeated more than once Jay remained in Paris. In May, 1783, Livingston suggested, in view of Spain's apparent change of heart, that Congress might wish to revoke its instructions of the previous August. As he did not recommend it, Congress decided to make no change.

Meanwhile Carmichael was keeping Livingston in-

formed of European affairs in general, was paying American bills and urging the claims of American sailors and merchants for redress for injuries received at Spanish hands. His success in dealing with Spain was negligible. He did secure from Floridablanca a statement that the terms of surrender granted at Pensacola and the Bahamas were not authorized in Spain. LaFayette came to Spain in December, 1782, in connection with the projected Franco-Spanish expedition against the British West Indies. While there he used his influence with both the French ambassador and the Spanish Court to aid Jay and Carmichael. He warmly seconded Carmichael's insistence that he be formally presented at Court as the American chargé. Floridablanca finally agreed, but delayed doing so until February, 1783. The few letters Livingston wrote Carmichael after Jay left dealt mainly with routine matters. Carmichael's conduct was approved and he was authorized to affirm positively that the United States would make no peace which was inconsistent with its engagements to its allies. "Perhaps," said Livingston, "this string skilfully touched may lead nations who have hitherto kept aloof to form connexions which may bind them to us."²⁶

Almost negligible were Livingston's relations with Portugal, Great Britain's traditional ally. That court had in 1776 ordered all American ships from Portuguese waters within eight days, and had directed that in future no shelter be given any ship from the United States. Russia urged Portugal to join the Armed Neutrality of 1780. Carmichael was correct in thinking that English influence at Lisbon would prevent. Livingston had from the first thought it improper to send a mission to Portu-

gal, but Morris, the Superintendent of Finance, had suggested that he and Jay devise plans for borrowing money in the Iberian countries, so Congress authorized Jay to send Carmichael to Lisbon on this business. Jay had said in October, 1781, that Floridablanca had promised to get Portugal to repeal the decree of 1776, but nothing had been done. Jay thought it would do no harm to send an agent to Lisbon, but believed the Spanish court would interpose objections. On the receipt of this opinion Livingston persuaded Congress that such a mission did not promise advantages commensurate with the expense or the loss of prestige which the United States would suffer if their envoy should be repulsed. So Jay was instructed not to send Carmichael unless he should have good reason to think that it would secure the object proposed by Morris. Franklin and Jay, two months later, protested to the Portuguese minister at Paris against the edict of 1776, but it was not until February, 1783, after the Anglo-American preliminaries of peace, that Carmichael could report the revocation of the obnoxious measure.²⁷

CHAPTER IV

THE DUTCH AND THE MUSCOVITES

SENT to Europe in 1779, on the chance that England might be ready to talk peace, John Adams found nothing to do. He was commissioned in June, 1780, to seek a loan in the Netherlands, and in December as minister plenipotentiary to negotiate a commercial treaty, and next August, to negotiate a treaty of alliance. In these activities he was ably seconded by his secretary C. F. W. Dumas, the former correspondent of the Committee of Foreign Affairs.²⁸

Of Adams as a diplomat, the best description is his own. "Your veterans in diplomacy," he wrote Livingston, "consider us as a kind of militia, and hold us, perhaps, as is natural, in some degree of contempt; but wise men know that militia sometimes gain victories over regular troops, even by departing from the rules. . . . I have long since learned that a man may give offense and yet succeed."

When Livingston took office Adams had spent nearly eighteen months in the Netherlands without securing recognition from the Dutch Republic or procuring more than a few thousand guilders in loans. Nevertheless he had made himself well-known, had studied the country and people and had acquired some valuable friends. England declared war on the Dutch in December, 1780, ostensibly because of Dutch hospitality to "the pirate Jones" and because when Henry Laurens was captured

by the British there was found in his papers the draft of a treaty between the Netherlands and the United States, which had been drawn up by E. F. Van Berckel, a municipal officer of the city of Amsterdam, and signed by John de Neufville, his agent, and William Lee, the unrecognized agent of Congress in the Netherlands in 1778. This was not an official draft, but was to be used as a guide for Laurens in any official negotiations he might undertake at The Hague. The British, who preferred to have the weak Dutch navy as belligerents than the numerous Dutch merchant marine as neutrals under the principles of the League of Armed Neutrality, took the alleged Lee-de Neufville-Van Berckel treaty as an excuse to declare war. Adams now attempted to exploit this situation for the advantage of his own country.

Livingston's first letter to Adams showed that the writer understood both diplomacy and Adams. He wrote that he realized that Adams's situation was very delicate, because of the strong partisan feeling in the Netherlands. As he relied upon Adams's judgment as to the true policy to be pursued, he should merely give his own general views in this letter. The advisability of getting the Dutch Government to see its identity of interest with the United States, in the war against the common enemy, was stressed. If Adams could not *be well* with the government, he should *appear* to be so. The Secretary advised Adams to remove from Amsterdam, the financial centre, to the capital. Adams, in reply, discoursed at length on the state of his health, promised to move to The Hague and doubted if a loan could be procured before a treaty was concluded.

After digesting the Adams letters on file, Livingston wrote again, requesting details about persons, parties, measures and institutions in the United Provinces. Of the news of Yorktown Livingston wrote: "I need not suggest to you the use that should be made of this information. You will see at once that it should not be buried or paraded; that it should be *discovered* but not *displayed*."

Adams had promptly conveyed to the States General and the Prince of Orange information of his commission (received in April, 1781) to negotiate a treaty of commerce. This document was accompanied by a memorial in which he set forth *in extenso* the reasons why the two republics should be friends. Returning the memorial the States General referred Adams's commission to each municipal and provincial government for consideration. Shortly after this Adams received his commission as minister. Against the advice of Vauguyon, the French minister, he presented his credentials to the Stadtholder and to the president of the States General, both of whom rejected them. Thereupon Adams had his memorial published in the newspapers, in Dutch, French and English, hoping to arouse public sentiment in favor of the United States. Though he wrote long and frequent letters, they were lost or delayed, so Livingston first learned of this "militia diplomacy" from Dumas. The Secretary promptly demanded an explanation of Adams's extraordinary conduct, especially the publication of the memorial, which conduct exposed Adams and the United States to humiliation. Adams's business, Livingston continued, consisted at that time of conciliating the Dutch, putting American affairs in the best light, correcting

British misrepresentations and seeking a loan. He urged Adams to co-operate with the French minister and advised him to conduct himself as a private gentleman. Most of the ensuing correspondence was along similar lines. Adams was sure he was right: Livingston was constantly and tactfully striving to set him right. Though superficially intimate with the French minister, Adams distrusted him and would neither confide in him nor follow his advice.

After various provinces declared successively in favour of recognition of the United States, Adams felt emboldened to demand again to be received as minister plenipotentiary. The States General granted him the desired audience in April, 1782. A month later he could write: "I have, after innumerable vexations, agreed with three houses which are well esteemed here to open a loan." Naturally he felt vindicated: he had been received officially and had secured the loan.

Adams had recommended that Dumas be made chargé d'affaires, at an adequate salary, in recognition of his faithful and efficient service. Livingston advised Congress against appointing as ministers, chargés or consuls any but Americans. He thought Dumas might be made secretary of legation. Dumas was enjoined to enter minutely into the subject of Adams's official reception, which subject was not only important in itself, but would be "so much the object of curiosity hereafter that it should have a place among our archives." When Adams was summoned to the peace negotiations Dumas remained in charge of the legation, housed in an edifice which Adams had bought in the name of Congress. Dumas made the reasonable request

to have his position determined. As late as May, 1783, Livingston was obliged to write him that Congress had done nothing about it. Yet the following month, when he ratified Adams's commercial treaty, Dumas signed himself "chargé d'affaires of the United States."

As this treaty, concluded in October, 1782 and ratified by Congress the following January, was the climax of Adams's Dutch mission, as well as one of the leading documents negotiated during Livingston's régime, it deserves a glance. By it, "most favoured nation" commercial treatment was guaranteed to Dutch and American citizens in each other's country, as well as liberty of conscience and freedom of worship. The signatories agreed to protect each other's commerce in peace and in a war in which they should have a common enemy. Dutch and American citizens residing, respectively, in the United States and the Netherlands, were given the privilege of disposing of their property by will or otherwise, and of employing attorneys and agents of their own choice. The merchants, owners, mariners and vessels of the one country were to be free from detention in the country of the other, except for debt or crime. Reciprocal business privileges were guaranteed, including navigation, under the usual port regulations. In time of war the merchant ships of one might proceed to the ports of the other's enemy, subject to the usual precautions to prevent the carrying of contraband. It is interesting to note in this connection that even when contraband might be discovered on board, care was taken to protect the rest of the cargo, and an inventory must be made in the presence of an admiralty officer. Neutral goods found on the enemy's ships, however,

might be confiscated, even though not contraband. Great care was taken to specify the procedure in all such cases, and in case of ships or goods recovered from pirates, so as to prevent abuses. Succour must be accorded the vessels or subjects of either party, wrecked or compelled to seek refuge in the realm of the other. Should war occur between the two signatories, their subjects should be allowed nine months in which to dispose of their property and remove from the enemy's country. The subjects of each were forbidden to participate in privateering enterprises against the other's commerce, under commission from a third nation. Consular privileges were to be reciprocal. Contraband was defined with great particularity, as well as passports and sea letters. The captains of Dutch and American ships might enlist their own nationals in the ports of the other country. Annexed to this treaty were forms for passports, certificates and sea-letters. A separate convention was concluded at the same time, respecting the disposal of vessels of the one nation recaptured by the other from a common enemy.

The significance of this short-lived treaty ²⁹ lies in the enunciation of principles designed to secure the freedom of the seas. Some of them had been incorporated in the Franco-American treaty of 1778. All have been contended for by the United States ever since. America took in its infancy the stand it has maintained in its maturity for the protection and extension of the rights of neutrals.

The Armed Neutrality embodied principles dear to America's heart, and the question of its attitude towards it came under Livingston's influence more than once.

Maritime countries generally resented British interference with neutral trade. It had remained for Catherine II of Russia to take the initiative, with a proclamation in February, 1780, declaratory of the rights of neutrals at sea. Contraband was restricted to munitions and other implements of war; the principle of "free ships free goods," was enunciated and it was declared that blockades must be effective to be binding. Denmark and Sweden promptly agreed with Russia to support these principles by arms—whence the "Armed Neutrality." Most of the continental powers including the Netherlands either acceded to this convention or expressed approval of its principles. Great Britain, of course, rejected it. In 1783 the Netherlands asked Adams if he had authority to accede to it, or to a similar convention with Spain, France and the Netherlands.

The initial proclamation of Catherine II was received in Congress with the warmest approbation. Samuel Adams brought in a long report on the subject, September 26, 1780, and made detailed recommendations of the regulations Congress should adopt. In place of this prolix report Livingston moved a resolution approving Catherine's action, ordering the Board of Admiralty to prepare instructions to the commanders of American war vessels, conformable to these principles, and directing that copies of the resolution be sent to the French representative in Philadelphia and to the American ministers abroad. The whole matter was then referred to a committee consisting of Samuel Adams, Livingston and Theodoric Bland. Livingston wrote the committee's report, which was adopted by Congress, October 5. The only important change from Livingston's resolution of

September 26 was the section directing and empowering the ministers plenipotentiary of the United States, if invited, to accede to such regulations, in the spirit of the Russian declaration, as might be adopted by "the Congress expected to assemble in pursuance of the invitation of her Imperial Majesty." Of course this action of Congress was an approval of the principles of international law embodied in Armed Neutrality, equivalent to that of France or Spain. Further, Congress was then willing to become a party to an international convention for the purpose of incorporating those principles into the body of international law. The Board of Admiralty reported the instructions to the commanders. Congress adopted them November 7 and re-issued them in a proclamation of April 7, 1781. As the expected congress never assembled, the American ministers had no opportunity to accede to a general convention.

Francis Dana of Massachusetts, then secretary to Adams, had been appointed minister to Russia in December, 1780. His commission stated that as Congress wished to show its regard for the rights of commerce and its respect for Catherine II and the principles of her proclamation, Dana was appointed minister with full power to accede to the convention for the protection of commerce, and to sign any treaty conforming to those principles. He was also authorized to propose a treaty of commerce with Russia. Before following Dana to Russia we must return to Adams.

That minister was in Paris in 1782 when he learned from Dumas of the inquiry of the Dutch Government. He consulted with Jay and Franklin and wrote Dumas that all three thought that such power was now vested

in Dana. If it were not practicable to reach him in time, they would, in order to expedite the signing of a general peace, pledge the United States to this principle. When the matter came to Secretary Livingston's attention he advised Congress that no American agent in Europe had authority to agree to such a convention. Dana's commission, he held, had superseded such powers granted all the ministers in 1780. As the Armed Neutrality was only for the duration of the war, even Dana's power had lapsed. Should Congress wish to join in such a declaration it was his opinion that new powers must be issued. He would approve this course only if France, Spain and the Netherlands were to be parties to the convention. Congress accepted this ruling, issued new powers to the peace plenipotentiaries and added a proviso suggestive of the attitude of the Senate towards the Treaty of Versailles, in 1919. The ministers were instructed to avoid any engagement which should obligate the contracting parties "to support those stipulations by arms." This would appear to be an armless Armed Neutrality.

It is to be noted that Livingston strongly favoured adhesion to the principles of the Armed Neutrality during the war, as a weapon against England. Peace preliminaries now having been signed, he felt that the members of the Armed Neutrality would abandon it, as their selfish interests might dictate. Hence he was averse to such an alliance. Many authorities feel that the United States was fortunate to escape participation in such a confederation. This country continued to espouse these principles, and embodied the principle of free ships free goods, in many of its early treaties. "Whatever advantage," says Carpenter, "might have

been gained for American commerce by membership in the league would not have compensated for the political embarrassments of such an alliance.”³⁰

Wharton thinks Congress had sent Dana to Russia “under the wild notion . . . that money could be got by sending ministers to ask for it wherever there was a foreign court.” Dana’s instructions reached him at Paris in the spring of 1781 and directed him to communicate his mission to the American ministers and through them seek the advice of the French Government. Franklin advised him to consult Vergennes about sounding the Russian Court before beginning the long and expensive journey. Dana contented himself with telling Vergennes he expected to start in a few days and would appear only as a private citizen until the time seemed propitious for announcing his mission. Vergennes let it be seen that he thought such a mission futile and had Luzerne tell Congress it had little chance of success. Next Franklin counselled Dana to consult Adams and the Russian minister at The Hague. As this city was on the way to Russia, Dana betook himself to Holland. Adams urged him to hurry on to St. Petersburg, “in the character of a gentleman, without any distinction of public or private,” and without consulting the Russian ambassador at The Hague. Dana followed this advice. Meanwhile Congress had appointed him secretary to the peace commission until he could proceed to Russia without endangering the interest and the dignity of the United States.

When this commission reached Europe Dana was already in Russia. He knew neither French nor Russian; Verac, the French ambassador, had no English.

Hence Dana's was a "position of the most mortifying isolation"; for of course the English in Russia ignored him and no Americans came there. Verac advised him that it was useless to expect the Russian Court to receive a minister from a power which, in its eyes, did not yet exist. This unpalatable truth drew from Dana a long argument to prove that Catherine II would be delighted to recognize the United States. He proposed to make a confidential communication of his mission to the proper Russian minister, with perhaps a memorial to the Czarina. He would ask such minister's advice as to the suitable time for taking any other steps in the business of his mission. This was of course equivalent to the telling Verac he wanted no more of the Frenchman's advice, though Dana professed to set great value upon his aid. Like Adams, Dana was too thorough a New England Puritan ever really to trust a French Catholic. He suspected Verac of seeking to delay him through ulterior motives. Of the rightness and righteousness of his own views he never had a doubt. Actually, Verac knew that the Czarina had no use for democrats and rebels and that Sir James Harris, the British minister, was putting every obstacle in Dana's way.

Livingston let nothing of his disapproval of the Russian mission appear in his first dispatch to Dana, written two days after taking office. He told Dana to make the best use of the news of Yorktown and Greene's southern campaign. American respect for both Russia and the Armed Neutrality was mentioned, and the letter closed with a request for a Russian dictionary, a grammar and a court calendar. Since it took from three to nine months for Dana and Livingston to exchange letters, they actu-

ally answered few of the many each wrote the other. Those written by Dana from France, Holland and Germany called forth Livingston's second (March, 1782), in which he advised Dana to increase the number of his letters and to send at least four copies of each; and requested the most minute reports on all phases of Russian life, especially the officials. He thought that Dana should wait to be asked about America, rather than thrust information upon his hearers. If he made it interesting enough, he might be invited unofficially to court, in which case he was advised to refrain from discussing European politics, upon which Catherine was much better informed than he. Since the British were not so obnoxious on the Neva as on the Hudson, Dana should relate their atrocities as dispassionately as possible. Even a superficial reading of Livingston's official correspondence must impress one with his almost uncanny divination of the type of advice most needed by a given minister. Circumstances and distance sometimes, as in the cases of Franklin and Jay, prevented its being followed; or temperament, as in the cases of Adams and Dana, caused it to be disregarded. In the light of today's knowledge, one realizes that, in view of the data before him, Livingston composed admirable dispatches.³¹

Dana's correspondence was meager. He never reached Livingston's repeated stipulation of one dispatch a week. Such commercial and political data as he could glean he joined with long and inaccurate speculations on probable Russian policy. Despite his threat to Verac he did not burst at once into Catherine's audience chamber. Suspecting Verac of seeking to delay him until France

could make a commercial treaty with Russia to the injury of the United States, he rejected the French minister's opinion that Catherine, having offered to arbitrate between England and its European enemies, would not consider the United States independent. Still he decided to wait the outcome of this offer of mediation. As to Verac's hint that Catherine would not receive an American minister until England had done so, Dana said if he believed that, he would go home at once. Verac was right. Not until 1809 did Russia receive an American minister. By the irony of fate it was John Quincy Adams, who, as a lad of fourteen, had gone to Russia as Dana's secretary. Whatever personal and political faults the Adamses had, their patriotism and integrity were unquestionable. Whence it is evident that one so esteemed by them as Dana was must have had some merit, despite the unfavourable picture his own dispatches paint. Thus Wharton characterizes him: "He was a scholar, a man of singularly high tone, and subsequently became eminent for his public services both in Congress and on the bench. But he went to [Russia] prejudiced against the French ambassador, who was the only diplomatist there who would recognize him; and without any means whatever, it would seem, of acquainting himself with the peculiar politics of the Russian Court." Wherefore he jumped at conclusions, as when he wrote Livingston (March, 1782) that British reverses and the French refusal to accept arbitration unless the United States was included would compel the mediators to invite the American ministers to a general congress.

With Dana's first three Russian despatches finally before him, Livingston expressed approbation of his

presenting himself only as a private individual until assured of a proper reception. This dispatch shows that Livingston had a much better grasp of the Russian situation than had Dana, as well as a surer perception of the true policy for the United States. He pointed out that Vergennes and Verac were right in their views of Catherine II's sentiments, and showed why such opinions would be natural to her. While applauding Dana's zeal and patriotism, he pointed out how humiliating it would be to announce himself prematurely, and ended by directing Dana to be guided by Verac. Meanwhile, he thought Dana could be useful only in collecting and forwarding the data so often requested, for which he *must* have abundant leisure. Livingston's arguments carried no more conviction to Dana than had Verac's, so he yielded but a grudging obedience to positive instructions. Livingston recommended that Congress require Dana not to present his letter of credence until certain he would be properly received. Eventually Congress approved this suggestion.

Upon the fall of the North Ministry (March, 1782), Dana again wished to announce himself. Once more Verac restrained him. So Dana wrote some "Reflections" on why all neutrals, especially Russia, should recognize the United States. These he had translated into French and was assured that three copies had been put secretly into ministerial hands, though we may doubt if ministerial eyes ever read them. Though he still felt certain that Russia was convinced of the fact of American independence, he began to realize that the Czarina would not receive him while she continued to offer mediation. Still, he would have risked a refusal,

he said, had he been left any option, as he thought the dignity of the United States would be less compromised by a refusal followed by his immediate withdrawal than by his long unofficial residence. As soon as he should be received, he wrote, he would return to America, bringing with him any treaty he might have negotiated. He warned Livingston that, by the express permission and direction of the Czarina, each of the four Russian ministers signing *any* treaty with *any* other power was to receive six thousand roubles from such a power.

No sooner did Livingston catch Dana's hint of coming home than he seized the chance to end this futile and expensive farce. Upon his recommendation Congress approved Dana's intention of returning, unless engaged in negotiations upon receipt of this order. Livingston sent it to Dana with the comment that the United States would assuredly not pay to join the Armed Neutrality. "Therefore, let it be understood that as the United States or their servants are above receiving perquisites or presents, so they have not the presumption to assume such superiority over those with whom they treat as to offer them." Dana's powers, he continued, were only to *discuss terms* of a commercial treaty, not to sign one. This dispatch threw Dana into a violent rage. He felt that Livingston doubted his knowledge of Russian procedure about gratuities, and he was sure "this Dutch lawyer," as he called Livingston, was wrong about his powers.

Congress followed Livingston's suggestions to the extent of approving Dana's return and directing him to enter upon no treaty without previous orders. If already engaged upon one, he was told to limit it to fifteen years .

and send it home for revision and approval. When Livingston forwarded these orders he knew he would vacate office within a week, and he hoped Dana would shortly return. Nevertheless, he penned this dispatch with meticulous attention to the good of the service, instructing Dana in detail as to the proper sort of dispatches to write.

Dana, who had not yet received Livingston's first denial of his powers, was eagerly watching for a chance to declare himself. He had secured from the peace commissioners at Paris the promise of the necessary *douceurs* for treaty making. With the news of the signing of the preliminaries of a general peace he could be restrained no longer. He sent a statement of his mission to the vice-chancellor, Count Ostermann, who merely returned an oral message that as it was the first week in Lent, the matter could not be laid before Her Majesty yet. Eight weeks later Dana jogged Ostermann's memory and received an oral invitation to call. The interview boiled down to this: Catherine would not recognize the United States before the conclusion of peace; would not receive Dana on a letter of credence dated before that event, or before she had recognized American independence; would not receive him before England received an American minister.

Anyone but Dana must have been convinced that Russia really preferred to have no intercourse with the United States. Dana, however, told Ostermann these terms were impossible, explaining why with great dignity and force. Several days were wasted in this hopeless effort, which caused him to write Livingston: "I do not think the advantage of a minister at this court will com-

pensate for the expense of it." But he remained! After three months more of heel-refrigeration, interspersed with useless appeals to Ostermann to which evasive replies were made, Dana received not the expected summons to court, but a summons home. With all seriousness, this conscientious but non-humorous patriot notified Ostermann that he must withdraw his request for an audience to present his letter of credence, as it would have to be followed immediately by one to take his leave. He assigned his departure to ill health, and certainly he was entitled to a spell of nervous prostration. He had done his best in a hopeless situation: Congress, not Dana, was to blame.³²

Some authorities think Dana was sent primarily to utilize the Armed Neutrality as a means to secure recognition from the Baltic countries. The wording of his commission tends to support that view. Others agree with Wharton that he was sent primarily to secure money. For us the significance of this mission, predestined to failure, lies in Livingston's relation to it. In brief, Livingston disapproved from the outset the plan of sending ministers to seek recognition indiscriminately. He realized that an autocratic government like the Russian would regard the American rebels with disfavour. Though he approved the principles of the Armed Neutrality, as a war measure, he preferred to enter it under the auspices of France or the Netherlands than of Russia. Nevertheless, Congress having created such a mission, Livingston zealously strove, by patience, tact, diligence and sound advice, to make it a success. Finding that impossible, he seized the first opportunity to extricate his country from an undignified

predicament. It is amusing to reflect how time has turned the tables. In the eighteenth century Congress vainly sought the recognition of Czarist Russia; in the twentieth, Soviet Russia so far has vainly sought that of the United States.³³

CHAPTER V

LIVINGSTON AND THE PEACE NEGOTIATIONS

WE saw that Adams was appointed peace plenipotentiary in 1779. Two years later Franklin, Jay, Jefferson and Laurens were added to the commission. Declining, because of family reasons and state politics, Jefferson later reconsidered. The weather and the British blockade prevented his leaving America before the provisional treaty was signed, so Congress revoked his appointment—which must have pleased Washington.³⁴ Laurens attended but a few meetings of the negotiators, his main service being through his influence on friends in England. The commissioners' instructions bound them positively on but three points: independence must be acknowledged; they must agree to nothing infringing existing Franco-American treaties; they must "undertake nothing in the negotiations . . . without [the] knowledge and concurrence" of the French ministers and were "ultimately to govern [themselves] by their advice and opinion."

Again and again as Britain seemed trying to induce France or the United States to desert its ally, Vergennes and Congress reiterated the idea of a common peace. Congress not only felt grateful to France, but believed it could secure better terms through French aid, an opinion in which Livingston concurred wholeheartedly. Jay strongly suspected what proved to be a fact, namely,

that France was secretly bound to Spain to continue the war until Gibraltar should be recovered. He and Adams resented being subordinated to French direction. After reaching Paris they were convinced of the secret Franco-Spanish agreement, and felt assured that France would put Spanish interests ahead of American.

Franklin, like Livingston, believed in French loyalty and felt bound to absolute frankness in the negotiations. Laurens held an intermediate opinion, seeing "no cause of entertaining more particular jealousy than ought to be kept upon guard against every negotiating court in the world." Adams and Jay held that the obligations of the United States would be sufficiently met by separate and concurrent negotiations and simultaneous treaties, rather than common negotiations and joint treaties. After a few preliminary interviews they positively declined to be guided by the French, especially Vergennes and Rayneval. Though not sharing their suspicions, Franklin acquiesced in their method of negotiating, which, as all know, eventuated in a provisional treaty, November 30, 1782, to take effect when terms were agreed upon between France and England, which happened in January, 1783. Definitive treaties between England and France, Spain and the United States were signed in September, 1783; a British-Dutch treaty, the next year. The Anglo-American treaty was ratified by Congress, January 14, by George III, April 9, 1784.

Livingston's first word on the peace negotiations was in a letter to Franklin, in January, 1782. Such points as boundaries and a share in the Newfoundland fisheries were emphasized, with strong arguments in support. Franklin was warned against British attempts to have

the Tories repatriated, with restoration of their confiscated estates. Livingston felt that they would menace the domestic peace after the war. The Chancellor's mind again guided the Secretary's pen when he wrote: "Give me leave to mention to you the necessity of stipulating for the safe delivery of all records and other papers of a public and private nature which the enemy have possessed themselves of." If Florida went to Spain, its boundaries should be delineated with exactitude. Most of the points Livingston proposed found their way into the treaty in one form or another—though not solely because he proposed them, of course. In other dispatches he discussed the trans-Appalachian regions, French and English benefits from American participation in the trade of the English and French West Indian trade, and similar matters. In a long and closely reasoned letter to Jay, he discussed American participation in British West Indian commerce again. With a thorough appreciation and comprehension of both agriculture and commerce, he pointed out that if the United States could not exchange its agricultural surplus for manufactures, it would be driven to produce the latter for itself. Once started, in a country of such natural resources, progress would be rapid and soon American manufacturers would menace those of Europe.³⁵

In September Jay was given a copy of a letter from Barbé Marbois, secretary of the French legation at Philadelphia, telling Vergennes that the United States should be excluded from the fisheries. Jay promptly sent this to Livingston, to support his contention that France intended to keep the United States under her tutelage until her own and Spain's objects were obtained.³⁶ These

documents produced an acrimonious debate in Congress, after two weeks of which Livingston condensed his own views and those of many Congressmen into a reply to Jay. He examined Jay's arguments carefully and refuted his suspicions ably. It would not be to the interest of France, he showed, to delay a recognition of American independence. As to Marbois' letter, that was the act of an underling, which did not bind Vergennes, and any letter which had come through British hands was to be suspected.

Franklin's recent letters had contained parts of his journal of the negotiations. After perusing them Livingston directed that any concessions of American trade must be for reciprocal advantages. He thought the restoration of confiscated estates impossible, and while strongly favoring the payment of British creditors, thought it best not to mention it in the treaty. Again he urged the importance of the fisheries, and warned Franklin to guard against mistrust or jealousy of France.

The provisional treaty, with letters and journals of the American commissioners arrived on March 12, 1783, and were at once handed to Congress. Luzerne received similar dispatches at the same time. Not only officially, through Livingston, but privately to various members of Congress, he revealed the displeasure of the French court at the independent methods of the American plenipotentiaries. The secret article, which provided that in case the British retained West Florida, its northern boundary should be a line drawn east from the mouth of the Yazoo,³⁷ caused a great stir. Congressional perplexity is vividly depicted in Madison's notes. Should Congress discredit its ministers by revealing this article to France

and repudiating it; or should it abrogate its previous pledges of confidence and co-operation? After letting Congress simmer and sputter for a week, Livingston requested its views for transmission to the ministers. He reminded Congress that in all its public and private acts it had manifested the utmost confidence in France, that the conduct of the plenipotentiaries had put Congress in an embarrassing dilemma. He felt that the British had introduced this secret article simply to alienate the allies, as the territory involved was inconsiderable. He pointed out that the British plenipotentiaries might reveal it to the French Court, or it might be used in Parliament to prolong the war by alienating both Spain and France from the United States. As a solution of the problem, he submitted resolutions directing him to communicate the separate article to Luzerne in such a manner as would best tend to remove any unfavorable impression it might make upon the court of France; to inform the negotiators of this action and the reasons for it; to instruct them to agree that this line should be the boundary in whosoever's hands West Florida might remain; that the treaty should not be in effect until a peace should have actually been signed between France and England.

As Congress seemed unable to reach a decision, Livingston communicated his own views to the negotiators. Beginning by approving the treaty as a whole, and their refusal to treat without a previous acknowledgment of independence, and the boundaries secured, he said: "My sentiments as to English debts you have in a former letter. No honest man could wish to withhold them. A little forbearance in British creditors till

people have recovered in part from the losses sustained by war will be necessary to render this article ³⁸ palatable, and, indeed to secure more effectually the debts." Next he indicated some ambiguities and obscurities which he urged them to clear up in the final treaty. For their want of frankness towards the French Court, he reprimanded them severely. The concealment seemed to him unnecessary, since even if France disapproved, it could hardly have acted against them at that stage. He repeated what he had told Congress about the secret article, which he feared was no longer secret. The views of Congress might be deduced from an enclosed summary of the hectic debates of the preceding weeks. To Franklin he wrote the same day that he was sorry for the concealment, which would be difficult of justification to the world.

Adams, Franklin and Jay wrote a concise defense of their conduct and promised to seek the changes recommended. Franklin, the least suspicious of them all, justified his yielding to his colleagues' suspicions in a separate letter which condensed his defense to this: Congress's "nomination of five persons to the service seems to mark that they had some dependency on our joint judgment, since one alone could have made a treaty by direction of the French ministry as well as twenty." Adams sent an equally characteristic reply. "Your late dispatches, sir, are not well adapted to give spirits to a melancholy man, or cure one sick of a fever," he began. He thought the United States had a perfect right to make the separate article, which affected neither France nor Spain. A communication of the draft to the French Ministry before it was signed would, he was convinced, have prevented

the whole peace. Jay did not send a separate dispatch to the Secretary but wrote "Dear Robert" a private letter in which he said the commissioners had agreed upon four essentials as preliminaries to negotiating with Britain. The French Ministry, he alleged, thought them all premature, extravagant or frivolous, whence the commissioners concluded they could not possibly co-operate with the Ministry in making a treaty. Jay defended his conduct good-humouredly and convincingly. His letter silenced "Dear Robert" even if it failed to convince him.

When official news of the signing of the general preliminaries arrived Congress directed Livingston to prepare a proclamation, which was adopted April 12, 1783. Sending this to the negotiators Livingston again urged the clearing up of obscurities. It may be said here that a comparison of the provisional and definitive treaties shows that some of these changes, almost Livingston's very words, were incorporated into the latter. In his last letter to the commissioners, May 31, 1783, Livingston commented on Dumas's report that the Netherlands had proposed a convention similar to the Armed Neutrality. As Congress had adjourned over the week-end he could not take its opinion, but he believed it would be reluctant to enter any European alliance.³⁹

CHAPTER VI

OFFICIAL ROUTINE

TURNING to the minor phases of Livingston's official duties we find that he had little business with that subordinate class of foreign agent, the consul. Most of this little was routine. Early in 1781 because of the difficulty of getting letters through the Spanish post-office, Congress authorized the appointment of an agent at Cadiz to relay Jay's correspondence. Richard Harrison, an American merchant of Cadiz, was chosen for the post, and was called "consul" by Carmichael. Livingston used him to transmit dispatches to most of the American ministers. He avoided a formal tone with such agents and chatted rather than directed. In his first letter to Harrison he begged for European news of all sorts. In return he gave American news. After a year's experience Livingston recommended that some recognition be made of Harrison's services. It was scarcely expedient to appoint him a consul then, but he should be assured of Congress's approval of his work and its desire to have it continued. Six weeks later he wrote Harrison that nothing had been decided in his case, the chief obstacle being the difficulty of appointing consuls before a treaty with Spain authorized it.

Gérard, the first French minister to the United States, was also consul-general, and made several appointments of consuls or vice-consuls. The Franco-American consular convention was not signed until January, 1782,

and not ratified, in revised form, until 1789. Not many new consuls were appointed by France during Livingston's régime. Toscan, who came as vice-consul at Boston, brought Livingston dispatches from Jay. The Chevalier d'Annemours, already consul for Maryland, was appointed consul-general for the southern states, Luzerne informed Livingston in May, 1782. His exequatur was issued by Congress in September, 1783.

Shortly after the signing of the consular convention, Thomas Barclay, an American merchant who had already assisted Franklin and Adams in various matters, was appointed consul in France. His exequatur was issued the following December. Later he was chosen by Livingston to audit and settle the various diplomatic accounts. He was made consul-general for France, in January, 1783, with authority to appoint vice-consuls. Like Harrison he was used to relay mail to the ministers. Barclay wrote frequently to Livingston, on matters of general interest as well as routine business. He pleaded that as consuls had no "sallery" it would be unjust to forbid them to engage in trade.

Nearly a year after Livingston left office, Congress accepted a principle he had urged repeatedly, by deciding to appoint only American citizens as diplomatic and consular agents. The last official paper in Livingston's correspondence is a note of June 5, 1783, transmitting to Congress the papers of an applicant for a vice-consulship.⁴⁰

Among the miscellaneous matters handled by Livingston may be mentioned a proposal of William Lee, March, 1782, that he be made minister to the Holy Roman Empire, to reside at Brussels. Lee had been commercial agent for Congress, then was commissioned as

minister to Berlin and Vienna. Both courts declined to receive him. Livingston did not even mention the Brussels scheme to Congress, but merely told Lee to apply to Franklin for a settlement of his accounts.

Various entries show that Livingston made a practice of scanning the European papers and making a digest of their contents for the benefit of Congress. In February, 1782, he agreed to a proposal of the Superintendent of Finance that their departments should supply Thomas Paine with data for articles for what would now be called propaganda to stimulate public morale. Both the journals of Congress and its manuscript papers show that when Livingston was absent on the duties of the chancellorship, his under-secretaries could and did carry on the routine business satisfactorily, so well was the department organized.⁴¹

Within two weeks after taking office Livingston wrote Duane that his salary was not equal to his expenses. Late in November, 1782, he called on Madison, told him that he intended to resign and asked if Madison thought Jefferson would accept the portfolio; or would he go to Spain and let Jay take it? Madison doubted this. Anyhow, December 2, Livingston resigned, assigning the increasing business of the court of chancery as the principal reason. He volunteered to conduct the office a few days to allow a successor to be chosen. He recommended his under-secretaries and Tetard to the favor of Congress. As he was quitting, he felt free to urge an increase of the salary of the head of the Department. Congress sent a committee which persuaded him to remain until January 1. Madison says that while the "expediency of augmenting the salary was suggested," it was "not much supported," prob-

ably because Congress resented Livingston's preferring the chancellorship to the secretaryship. Unable to agree upon a successor, Congress induced Livingston to remain until May, with a short leave of absence to attend to his own affairs and those of the court of chancery. Again in May Congress besought him to remain. Livingston replied that while he could not stay at the existing salary, it would overrate his importance to name the terms upon which he could continue. Not only must he give up the chancellorship or the foreign office, but the value of his estate depended largely upon the personal supervision of the owner. In justice to his family he must persist in his resignation.

Congress then passed resolutions thanking him for his services and expressing "a high sense of the ability, zeal and fidelity with which [he] hath discharged the trust reposed in him," and directing him to turn the departmental papers over to its secretary, Charles Thomson. Exactly when Livingston actually left office cannot be determined. We have seen that his last paper was dated June 5. He told Thomson that he expected to turn over the archives of the Department the next day, and Madison wrote Jefferson, June 10, that Livingston had taken his leave. From Valley Lebanon, Livingston wrote, June 14, thanking Congress for the laudatory resolutions. Madison wrote Monroe in 1785; "The practice of Congress during the administration [of Livingston] was never fixed, and frequently improper, and I always suspected that his indifference to the place resulted, in part, at least, from the mortifications to which this unsteadiness subjected him." Just a fortnight before Livingston left, it was moved in Congress that no minister be employed

abroad, except on extraordinary occasions. This, it was suggested, would not only save money, but would protect distinguished Americans from the corrupting scenes of foreign courts and preclude the residence of foreigners in America, where their "intrigues and examples might be injurious to both the government and the people." This proposal was not adopted, but the fact that it could be seriously considered must have convinced Livingston that there was little chance of developing his department under such a Congress.

Yet it appears from the correspondence of Livingston, Madison and Thomson that had Congress been less niggardly it could have retained Livingston's services, for a while at least. He would have liked to sign, as Secretary for Foreign Affairs, the treaty of peace, and even suggested to Madison, July 19, that if Congress had chosen no successor by the time the treaty arrived, it would give him pleasure to be permitted to sign "in that character and thus close [his] political career." If Madison reported this to Congress, it was ignored.

Lewis R. Morris, first under-secretary, was left in charge of the office, but, as Congress made no provision for him, he soon left. Congress discussed electing a secretary but did no more. The departmental papers lay under seal in Thomson's office. One of his staff, Henry Remsen, Jr., was elected under-secretary in March, 1784, to take charge of those papers. "As a matter of fact," says Hunt, "the functions of the Department were suspended from the time Livingston left until his successor arrived, our foreign relations being managed wholly by Congress upon reports of special committees." President Elias Boudinot, who knew whereof he spoke, wrote Livingston in

September, 1783: "Our affairs go badly here — no Minister of Foreign Affairs."

About the same time Livingston wrote Elbridge Gerry, a member of the committee on foreign affairs, that his expenses had exceeded his salary by more than \$3000 a year. During the last six months, when he had remained by the special request of Congress, he had had to pay out more than \$2000 in excess. Would Gerry help him collect his claim? Gerry agreed to try, but considered the prospect poor. Congress did finally (April, 1785) appropriate \$1500 to pay this debt.⁴²

What had Robert R. Livingston accomplished in his twenty months of arduous service as Secretary for Foreign Affairs? He organized the department, trained four assistants, assorted the papers, brought system and regularity into the correspondence of the ministers and consuls, impressing upon them the need for full and regular reports. By his cheerful co-operation he somewhat eased the burdens of the Superintendent of Finance and the Secretary at War. He kept the army commanders in touch with European news. Despite the penchant of Congress for "militia diplomacy" he prevented the appointment of ministers to Lisbon and Brussels and procured the abolition of the embarrassing Russian mission. By his constant reminders he somewhat lessened the dilatoriness of Congress in foreign affairs and taught that body much about the proper functions of his department. He did much to keep the state governments in touch with the central government, and in so doing preached the loftiest views of national ideals and patriotic conduct. Could he have been retained until his successor qualified, much embarrassment, expense and delay would have been

saved; as it was, during the long interim, much of his good work was undone. But Hunt is correct in saying: "In spite of the obstacles in his way, Livingston's services had been of the highest order."

Some doubt had arisen as to whether Livingston's service as foreign secretary had vacated the chancellorship. The New York legislature settled the doubt by re-electing him, in 1783. During the ensuing winter he served on the commission to govern lower New York following the British evacuation. He was one of the commissioners to settle the boundary disputes with Massachusetts (1784) and Vermont (1790).

For the third time Livingston appeared in Congress as a delegate from New York, December 7, 1784. He remained until the following July, with some absences to attend the court of chancery. It was he who moved for the appointment of a minister to Great Britain. Accordingly, in February, 1785, Adams was elected. Livingston served on various committees, sometimes as chairman, to consider matters relating to the Department of Foreign Affairs. Apparently his last important service was on the committee which reported, in July, on the status of the court of appeals and its duties with regard to certain cases referred by the Secretary for Foreign Affairs. Monroe tells us that during this last period in Congress Livingston was nominated for minister to Spain, England and the Netherlands, but never received a majority of the votes.

With Hamilton, Benson and Duane, Livingston was appointed a delegate to the Annapolis convention of 1786, but he did not attend.

By this time parties in New York could be classified

into the *radicals*, led by the Clinton family, standing for extreme democracy and separatism; the *conservatives*, led by the Jay-Schuyler-Hamilton group, favoring federalism and aristocracy; the *moderates*, led by the Livingstons, being more democratic than the conservatives, more federalist than the radicals. In the New York convention of 1788 Livingston worked strenuously with Hamilton, Jay and Schuyler for the ratification of the Federal Constitution, against a vigorous opposition led by Lansing and the Clintons. The manuscript journals of the convention⁴³ show that the Chancellor spoke often and cogently for ratification, contributing in no small degree to that result. At the outset he put through a resolution that no vote should be taken on any part of the Constitution, or upon any proposed amendment, until the whole had been considered, clause by clause. He thereby ensured that the opposition could not, by concentrating on the most unpopular feature, defeat the whole instrument or amend it piecemeal. Only after a careful study of the entire document was it to be adopted or rejected. It was therefore very fitting that the Chancellor should have the honour, the next year, of administering the oath to President Washington. Five years later he was asked by the President to succeed Gouverneur Morris as minister to France, but declined. In 1795 he urged Washington to reject the Jay treaty. Three years later he ran against Jay for governor, losing by about 2400 out of some 28,500 votes. President-elect Jefferson, in 1800, besought Livingston to become Secretary of the navy "to help repair the monarchistic tendency of the two previous administrations." This portfolio he also declined though three months later he accepted the French mission.

At this time Livingston was still alert, mentally and physically. Fifty-five years old, he was tall, well-proportioned, with large regular features, very keen eyes, one brown, the other blue. He was an able orator, "chaste and classical." Unfortunately he had become very deaf, which caused a witty Frenchman to observe that first the Americans sent a minister who could not *speak* French (Murray), then one who could not *hear* it. Perhaps this was one reason for Talleyrand's rather cavalier treatment of Livingston, which led the latter to say that unless the Foreign Minister mended his manners the American minister would hold only written intercourse with him. If Jay and Adams knew of this, they must have chuckled in unholy glee and longed to be Secretary of State in order to urge Livingston to be intimate and confiding with the French Government.

President Jefferson had especially charged Minister Livingston to press for a settlement of the French spoliation claims, a subject which later troubled Livingston's brother at this same capital. When Jefferson learned of Spain's cession of Louisiana to France he directed Livingston to negotiate for the purchase of New Orleans. This he did with great vigour, setting forth his arguments in a manner which one of the French ministers characterized as "*presque menaçante*." So persistent was he in getting his arguments before Bonaparte that one member of the Government said he would give Livingston a "certificate as the most importunate negotiator [he] had yet met." This was probably his old acquaintance, Barbé Marbois, in whose hands Bonaparte finally placed this matter, partly because he sensed the antagonism between Livingston and Talleyrand, partly because the latter opposed the

sale of Louisiana. By the time Monroe arrived, bringing the President's *cachet*, Livingston had practically concluded an agreement for the purchase of the whole territory, not of New Orleans but of Louisiana.⁴⁴ Monroe went from Paris to London, as minister to England. Shortly Livingston followed, apparently as a voluntary and unofficial peace-maker. He failed to avert the impending war between England and France, but incurred the further resentment of Monroe, already jealous about Louisiana. Livingston gave up the French mission in 1804, and spent several months in travel before returning to Clermont. He was succeeded by his brother-in-law, General Armstrong.⁴⁵

Back at Clermont, Livingston continued active in his efforts to promote the civic, industrial and cultural progress of the state and the nation. Of mixed Scotch and Dutch ancestry, he was not oblivious to opportunities for advancing his own fortunes. As early as 1794 he had shown interest in steam navigation, and had promoted the experiments of Fitch, Rumsey, Stevens and others. He secured in 1798 a charter (renewed in 1803 and 1806) giving him a monopoly of steam navigation in New York. He corresponded with Jefferson concerning a steam engine of his own invention. While in France he had fostered Fulton's experiments on the Seine. Now, on the Hudson, he not only financed Fulton, but helped design the *Clermont*. Both the Society for the Promotion of Useful Arts (1783) and the American Association of Fine Arts (1801) numbered him among their founders. As was to be expected, he was vitally interested in agriculture, and was for many years president of the state agricultural society. He introduced merino sheep into America and

popularized gypsum as a fertilizer. He published essays on various phases of husbandry, including the culture of sheep, of vetches and lucerne, the manufacture of flour and the domestication of the moose and the elk.⁴⁶

The first canal commission of New York (1811) numbered Livingston among its members. The plans of this commission included a project which materialized in the Erie Canal, several years after Livingston's death, which occurred at Clermont, February 26, 1813, in his sixty-seventh year.

Born during King George's War, he died during the War of 1812. He had witnessed the downfall of French power in America and had helped throw off British rule. Assisting in the transformation of New York from colony to state, he had done much to determine her system of jurisprudence. As Secretary for Foreign Affairs he had helped to guide the Confederation through a critical period, and may be said to have laid the foundations for the organization of the Department of State. The numerous offices he held or declined to hold show the esteem in which his contemporaries held him, while so competent a judge as the late John W. Foster declared that while Livingston "labored under great embarrassments, . . . his papers show a high order of talent and he was a valuable public servant."⁴⁷

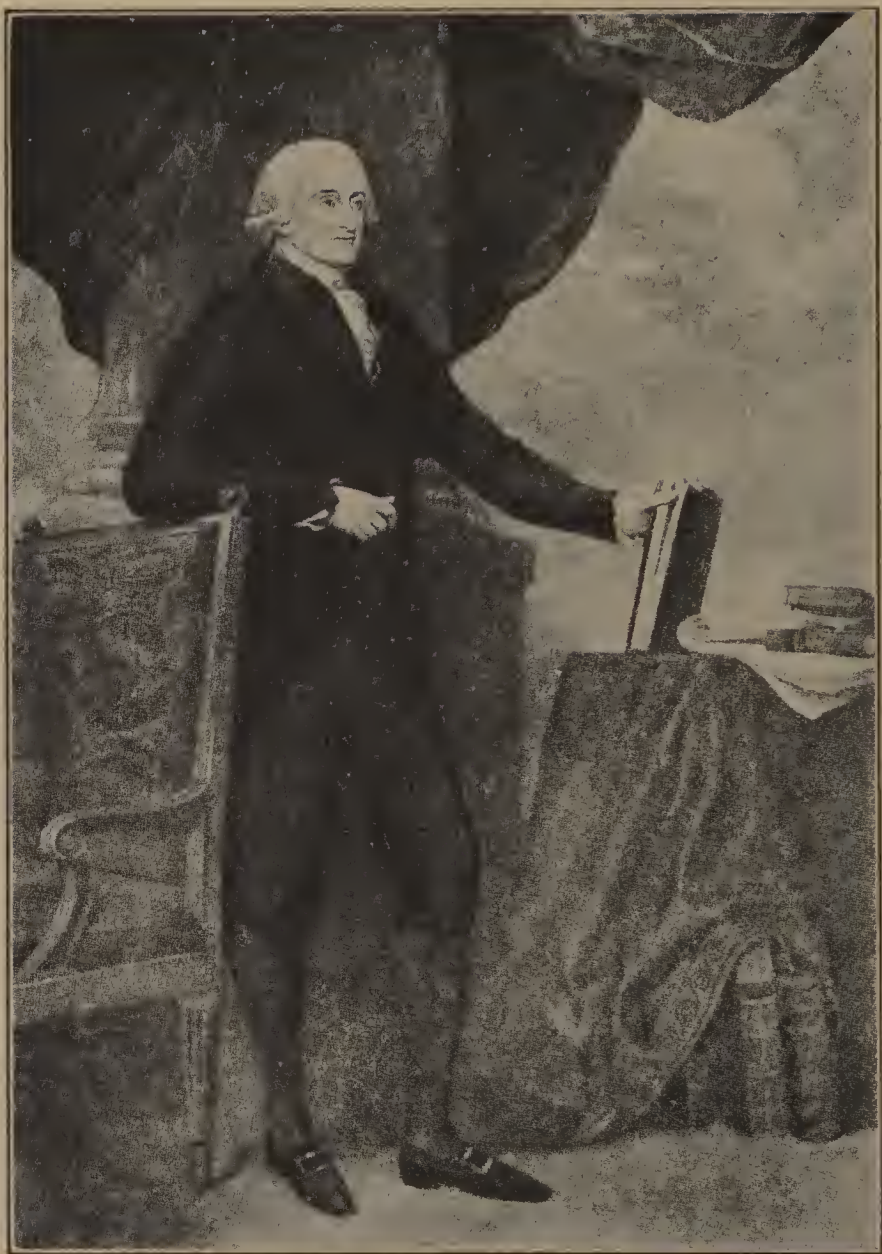
JOHN JAY
SECRETARY FOR FOREIGN AFFAIRS
OF THE CONTINENTAL CONGRESS
SEPTEMBER 21, 1784 TO SEPTEMBER 15, 1789.
(ACTING SECRETARY OF STATE, SEPTEMBER 15,
1789, TO MARCH 22, 1790)

BY

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JOHN JAY

FROM THE PORTRAIT BY JONATHAN TRUMBULL,
IN CITY HALL, NEW YORK. (COURTESY
OF MR. W. C. FORD)



John Jay

JOHN JAY

CHAPTER I

EARLY CAREER AND APPOINTMENT AS SECRETARY FOR FOREIGN AFFAIRS

AFTER the resignation of Robert R. Livingston as Secretary for Foreign Affairs, of the Continental Congress, June 4, 1783, the office for some time went unfilled. At the direction of Congress its Secretary, Charles Thomson, assumed care of the papers of the office during an interregnum of eleven months. On March 1, 1784, an undersecretary was appointed, Henry Remsen Jr., to take charge of the office until the election of a Secretary for Foreign Affairs. The voluminous correspondence of the United States diplomatic representatives abroad during this period was addressed to the President of Congress. Most of it went unanswered, being of a nature which did not indispensably need reply. The most important subjects were referred to Congress for decision, which in turn referred them to committees that formulated replies. These were then passed as resolutions and signed by the President of Congress, successively Elias Boudinot and Thomas Mifflin, for transmission to agents abroad. A great deal of financial business, arising out of foreign loans and purchases, was directed by the Secretary of Finances, Robert Morris, who corresponded directly with diplomatic agents in Europe. In reading

over the diplomatic correspondence of these months one is surprised to see how well the country got along with a total of about a dozen or twenty communications to its representatives abroad in answer to several times that number of despatches received.

Congress elected John Jay as its Secretary for Foreign Affairs, on May 7, 1784, after learning that day from Franklin that Jay had decided to return to the United States following the conclusion of the peace negotiations. The promptness with which that body acted is testimony to its need of an experienced diplomatist to manage its foreign business. With Benjamin Franklin, John Adams and Henry Laurens still in Europe, Jay was really the only responsible statesman with an European experience who was available. No better appointment could have been made.

The reader already in preceding pages has met John Jay frequently in the diplomatic affairs of the Revolution. He was one of the few eminent leaders in American public life who was not of English descent. Born December 12, 1745, in New York City, he was the eighth child of Peter Jay and his wife Mary, the daughter of Jacobus VanCortland. The Jay family itself was of Huguenot descent; the VanCortlands, as the name indicates, were Dutch. Both families had been for several generations established in New York, where Peter Jay as a merchant enjoyed the repute and estate of a "gentleman of opulence, character and reputation."

John Jay was educated under the conservative auspices of King's College, as the present Columbia was then known, and later studied law in the office of Benjamin Kissam, a respectable barrister of New York City. His

first public employment was as secretary to the royal commission appointed in 1769 to settle a long-standing dispute between New York and New Jersey.¹ The experience of observing the settlement of an old boundary dispute by means of a mixed commission made a profound impression on this young man, if we are to judge by his subsequent significant activity in applying such a means of settlement to international disputes.

It was while Jay was rapidly winning his way at the bar that the troubles with England convulsed the colonies and threw over them the shadow of the approaching hostilities. Jay himself, though active in resisting the British coercive measures, instinctively was one of the last to be convinced of the policy of separation from the British Empire. Throughout his long life he was an advocate of strong and centralized government, and cutting loose from all imperial ties to toss on the seas of American state sovereignty must have been disturbing to a man of his temperament. The decision irretrievably made, Jay threw his energy and talents with the cause of independent America, and after July 4, 1776, there was no man in the United States, nor has there been any man since who was more jealous than he of that national independence. He was an influential member of the first and second Continental Congress until 1779. When he resigned in that year he had just finished a term as its President. Meanwhile he had served as colonel in the New York militia. He drafted the first constitution of the state of New York and when from 1777-1779 he served as Chief Justice of the state, he was the supreme interpreter of that document. It was in order to repair his private fortunes that he resigned all his public offices in 1779.

By his marriage with Sara Livingston in 1774, Jay had allied himself with a wealthy family and a most powerful one in the social and political life of New York and New Jersey. Mrs. Jay was a woman of surpassing charm and beauty and of a steady ambition. Her influence over her husband was supreme, and had an appreciable effect on his political conduct, especially when he was Secretary for Foreign Affairs. At this period of his life, during the later years of the Revolution, Jay is thus described by his best biographer: "Carefully and well nurtured, in the comfortable society of honorable relations and friends, occupied in the profession of his choice, successful in the love of his heart, he was now a slender, graceful man, with refined, serious face; whose slowly matured character had ripened to well-balanced wisdom unconsciously and apparently unsuspected."²

A careful study of Jay's career as a diplomatist, and of his many letters, does not leave the impression that he was at any time unconscious of his own wisdom. On more than one occasion his vanity was to prove his undoing. A later British subject who had been associated with Jay in legal and public affairs during the American Revolution, and who knew him well enough to size him up for the benefit of the British Foreign Minister, with whom Jay was to negotiate the famous treaty which bears his name in history, thus characterized him in 1794: "He argues closely but is long-winded and self-opinioned. He can bear opposition to what he advocates provided regard is shown to his ability. He may be attached by good treatment but will be unforgiving if he thinks himself neglected. . . . Almost every man has a weak spot, and Mr. Jay's weak spot is Mr. Jay." This analysis was not

written for future publication but for the profitable edification of a diplomatist who was to deal as an adversary with Jay on matters of vital importance to a great empire. Though not flattering it is accurate. This was indeed Jay's only real weakness. He was a man of deep piety and unshakable religious faith, unswerving in his patriotism, who endeavoured honestly to keep an independent and evenly-balanced faculty for political judgment. In his determination to be impartial he was so careful that he sometimes leaned over backward. He was fond of good society and entertainment, most affectionately devoted to his domestic ties, impeccable in his standards of private morality.

In the field of diplomacy Jay's first service was as representative of the United States to Spain, where from January 22, 1780, until the middle of May, 1782, he fought earnestly but in vain to secure recognition of the independence of the United States, financial assistance, and an alliance against Great Britain. It is no disparagement to him as unrecognized United States minister to that monarchy, to say that the two most important dates of his sojourn there are those of his arrival and his departure. His was an impossible task, that of bringing Spain to recognize our independence without at one and the same time furnishing her own colonies in the American continents a precedent for revolt at some future date. Perhaps Spain would have recognized the independence of the United States had it not been for its colonies—its entry into the war against Great Britain showed that it was not out of deference to that power that the independence of British colonies was not acknowledged. But there was more than recognition at stake. Spain claimed free-

dom to make conquests of the territory west of the Alleghany Mountains to the Mississippi River, which land the United States looked upon as its legitimate inheritance and the boundaries of which it intended to secure for itself at the treaty of peace. A serious issue was at stake here. Further, Spain, who held both banks of the lower Mississippi, after the conquest of the British Floridas was determined to keep all foreigners out of the river where it flowed entirely through Spanish territory. To the future American settlers of the West the navigation of that river unrestricted to the Gulf of Mexico was to be a matter of vital interest. Spanish statesmen were not unnaturally distrustful of representatives of insurrectionist republican colonies who demanded not only recognition of independence, money subsidies, and a military alliance, but acknowledgment by Spain of their right to navigate the Mississippi to the sea as British subjects had done before the Anglo-Spanish war, and further that the same river be accepted as their western boundary. Upon intimations from France, Congress had offered to Spain, in 1781, as the price of recognition and an alliance, to yield the navigation of the Mississippi and to recognize a free hand for Spain in the Floridas. Even this Spain would not accept. It expected actually to get these things without any obligation to the revolted British colonies.

We should notice that Jay during his mission to Spain was thoroughly opposed to any yielding of American claims to navigate the Mississippi. Though, perforce, he obeyed his instructions to offer that equivalent for an alliance, he personally disapproved of the step.³ Prudently, he made the American offer conditional upon im-

mediate Spanish acceptance. When Spain refused, with very proper caution he formally withdrew it. The fact that it had once been offered, and through him as an intermediary, was later to plague him.

Jay's attempts to get loans from Spain were little more successful. He was given many promises, but in the end obtained only approximately one hundred fifty thousand dollars, by dint of persistence which sorely tried him, not only as the representative of his country, but as a human and sensitive man of great pride. He was never officially received by the Spanish Court—from the standpoint of Spain, rightly, for his official reception would have been tantamount to acknowledgment of the independence of his country.

For these reasons it was a relief from an intolerable situation when he was requested by Franklin to repair to Paris to take part in the negotiations for peace with Great Britain. Upon arriving there on June 23, 1782, he was at first prevented by ill health from taking an active part in the negotiations, but later Franklin's health placed the negotiations for a time in Jay's hands, a state of affairs which continued until the signing of the preliminary articles with Great Britain on November 30, 1782. This was so because of the arrival in Paris, in the latter part of October, of John Adams, who shared Jay's views. Jay's influence on the peace negotiations already has been noted. His experience in Spain had made him suspicious of the motives of all foreign nations towards the United States, and he arrived in Paris with the preconceived conviction⁴ that our French ally, who was also the ally of Spain by terms of an unpublished treaty, was playing false to American interests. It was due to Jay's advice

reinforced by John Adams, that the three peace plenipotentiaries at Paris decided to sign, without the knowledge of France, the contingent preliminaries of peace, thus violating their instructions from Congress to sign only in the full confidence and acquiescence of the French Minister. Nothing was gained by this.

After the conclusion of the peace negotiations in 1783 Jay made a few months' visit to England, for health and amusement. He set sail to America from France in May, 1784.

He did not learn of his appointment as Secretary for Foreign Affairs until his arrival at New York, July 24, 1784. For this office he had not been an applicant and he was not anxious to accept it. He had declined the post of minister to France, and also that of minister to Great Britain, in 1784, in order to re-enter private life and his law practice, long interrupted by his service for his country. Now he found himself appointed Secretary for Foreign Affairs and also elected a delegate of the state of New York to Congress. Not until he was assured that Congress would sit thenceforth in New York City instead of the less accessible town of Trenton, New Jersey, would Jay take the office of Secretary, and then only after he had demanded the privilege of appointing his own clerks. This condition accepted, he resigned his seat in Congress and entered on the duties of office, September 21, 1784.

In beginning his work he assumed that the Secretary should conduct the foreign affairs of the Government, and insisted that the correspondence concerning foreign affairs should be directed to him and not communicated to Congress before it had been received and examined .

by him. In a letter to the President of Congress, dated January 23, 1785, Jay said:

“I have some reason, Sir, to apprehend that I have come into the office of Secretary for foreign affairs with Ideas of its Duties and Rights somewhat different from those which seem to be entertained by Congress.”

It is true that the resolution of Congress of February 22, 1782, in relation to the Department could be interpreted in such a way as to vest in the Secretary for Foreign Affairs the minimum of authority which he felt necessary for the proper conduct of his office; but in order that there should be no doubt about it, he asked for instructions. On February 11, 1785, the Congress, interpreted the duties of the Secretary in accordance with Jay's conception; it decided that “all communications to as well as from the United States in Congress assembled on the subject of foreign affairs, be made through the Secretary for the department of foreign affairs; and that all letters, memorials or other papers on the subject of foreign affairs, for the United States in Congress assembled, be addressed to him.” Congress also resolved that all papers in a foreign language were to be sent to the Congress by the Department of Foreign Affairs, accompanied by an English translation; and the Secretary was authorized to appoint an interpreter to translate such papers as might be referred to him by the Congress, by its committees, by the Secretary of Congress, the Secretary for Foreign Affairs himself, the Board of Treasury, or the Secretary for the Department of War. For these services, he was to receive a salary in the discretion of the Secre-

tary, but not to exceed, "the annual pay of a clerk in the office."⁵

An American scholar has commented upon this state of affairs with a touch of humour. "As late as 1788 there were in the office, besides the Secretary and his assistants, only two clerks, or just enough . . . for one of them to be in the office while the other went to luncheon. The quarters of the office . . . consisted of only two rooms, one of them being used as the parlor, and the other for the workshop."⁶ Notwithstanding the modest quarters of the Secretary, and the staff—if such it may be called—at his disposal, the office was one of prestige, and exercised great influence, due, it would seem, to the character, attainments and previous distinguished career of Secretary Jay. It was a serious position, and he took both himself and the business of his office seriously, with the result that both he and his office were so considered. In a letter to Vergennes, on January 10, 1786, the French minister to the United States said: "The political importance of Mr. Jay increases daily. Congress seems to me to be guided only by his directions, and it is as difficult to obtain anything without the co-operation of that minister as to bring about the rejection of a measure proposed by him."⁷

The Secretary for Foreign Affairs possessed the privilege of appearing before Congress—of which he was not a member—and of laying his views, orally, before it. Jay availed himself of this privilege; and it is evident from these two statements that he was Secretary in fact, as in name, for he decided what should be transmitted to Congress, and appeared before that body in person, if he thought it necessary, on the matter of the correspond-

ence, or any other question relating to his department. It was natural, therefore, that Congress should grow accustomed to listen with deference to his views and to seek his advice. Nor was this all. The confederated American states looked upon themselves as foreign to each other except in so far as by the Articles of Confederation they had expressly delegated the exercise of some of their sovereign powers to the United States in Congress assembled. The Secretary for Foreign Affairs was, indeed, the channel of communication between the Congress and the supposedly sovereign states.

It is evident that Jay brought, in the opinion of his fellow-countrymen, two valuable qualities to his office: much actual experience in foreign affairs, and a judicial mind. As an indication of the extent to which he had profited by his study of international law and his early experience as secretary to the royal boundary commission, it is proper to mention an early suggestion on his part to the Congress which, though unaccepted at that period and indeed at a later date, he was himself eventually able to carry into effect when, as Chief Justice of the Supreme Court of the United States, as well as plenipotentiary of this country, he put his hand, on November 19, 1794, to the treaty between Great Britain and the United States generally known as the Jay Treaty. Under date of April 21, 1785, the Secretary for Foreign Affairs sent to the Congress a report respecting the eastern boundary line of the United States in which he recommended that effectual measures should be taken to settle at once the disputes between Great Britain and the United States as to the precise location of that line; that for this purpose the papers in the case should be

sent to John Adams, then minister plenipotentiary at the Court of St. James, with instructions to present a proper representation of the case and to propose that commissioners be appointed to hear, and finally decide, those disputes. Secretary Jay took the liberty of suggesting "hints on the subject" to the effect that a commission should be appointed, to be composed of six or eight, or ten or twelve, at the election of Great Britain, inasmuch as the number was not important; that each of the parties should appoint one-half of the commissioners, who should either be all foreigners, or persons of the two nations, at the election of Great Britain, inasmuch as this matter was not important; that if the commissioners should be appointed from the parties in controversy none should be a representative from the dominions situated in and to the west and south of the Gulf of St. Lawrence or from the state of Massachusetts, because these portions of the two countries were interested in the decision of the case. The commission was to sit in North America, if composed of the nationals of the contracting parties, and in Europe if made up of foreigners, and the technical details of the arbitration were further worked out by Jay with much elaboration.

We have here a proposal for the appointment of a commission at a time when mixed commissions between nations had almost gone out of use. It shows us that the idea of arbitration by mixed commissions was a principle of John Jay long before it was included as a noteworthy feature of Jay's Treaty of 1794, in which the United States began its very respectable career of international arbitration.

Jay submitted his report to the wisdom of Congress, and Congress in its wisdom took no action. But from April 21, 1785, the date of his report, international arbitration had become an American proposal for the settlement of differences between nations; and in Jay's Treaty of November 19, 1794, arbitration was again to come into favour with the modern world.

This boundary dispute with Great Britain was only one of the minor difficulties with that power which followed the treaty of peace. We mention it at this place for the pleasing purpose of emphasizing John Jay's contribution to one of the noblest principles of human activity.

The problems which Jay had to deal with as the Secretary for Foreign Affairs were those of adjusting the foreign relations of the United States to the basis of peace and independence. Congress, whose servant was Jay, was anxious to negotiate treaties of peace and amity, of "commercial alliance" with all the nations of Europe, pursuing the fond expectation that the great maritime monarchies of the world other than our ally France would be willing to throw their colonial trade open to the United States now that the latter was free from the shackles of the British navigation system. In this expectation it was to be disappointed. Great Britain and Spain, the two great colonial and maritime powers other than France, were, as we shall presently see, not at all eager to form treaties of commerce and amity, and even some of the smaller powers of Europe hesitated, if only in view of the uncertain political power of the Confederation, to conclude treaties. But two treaties of amity and commerce had been signed since the French treaties of 1778. After Great

Britain had declared war on the Netherlands, that State had concluded a treaty, October 8, 1782, which was ratified by Congress on January 23, 1783. This treaty had been for some years the object of John Adams's importunities at The Hague. The preliminary articles of peace between the United States and Great Britain made it possible for the neutral states to recognize the United States without fear of breaking off their relations with Great Britain. Immediately after signature of the preliminaries, negotiations were begun by Sweden, through her ambassador at Paris, for a treaty with the new American republic. Franklin and the Comte de Creutz, after a short negotiation, had no difficulty in signing, April 3, 1783, a treaty of amity and commerce. This was the first unsolicited recognition of the independence of the United States. Both the Swedish treaty and the Dutch treaty were based on the principles of the French treaty of commerce of February 8, 1778, with some slight modifications and improvements. The French treaty in turn rested on the model plan for treaties with foreign powers which had been drafted by a committee of the Continental Congress, of which John Adams was the most influential member, almost coincidently with the Declaration of Independence. This plan followed in effect the practice of the small-navy nations of Europe during the previous century: free ships free goods, liberty of nations to trade between different ports of a belligerent, neutral convoys, limited list of contraband, not to include foodstuffs or naval stores; and, generally, considerate treatment of neutral shipping by belligerents so as to reduce to a minimum all interference with neutral trade.

This "plan of 1776" and the subsequent French, Dutch

and Swedish treaties, became the basis of new instructions issued by Congress on May 7, 1784, to a commission plenipotentiary of three members, Benjamin Franklin, John Adams and Thomas Jefferson. The commission met in Paris in May, 1784, after the departure of Jay for New York, and opened up a number of negotiations. There resulted only two treaties, that signed with Prussia on September 10, 1785, and that signed with Morocco by an authorized deputy of the commission, Thomas Barclay, in January, 1787, which last treaty will be considered in an appropriate place. The Prussian treaty contained the principles of the previous treaties of the United States, above mentioned, plus some important humanitarian innovations, to be attributed to Franklin. Articles XXIII and XXIV fixed the immunity of non-combatants in wartime and provided for the decent and considerate treatment of prisoners of war. Another important article, which has had some influence, by virtue of subsequent renewals of articles of the treaty of 1785, during the war of 1917-1918 between the United States and the German Empire, was Article XIII. This provided that contraband goods could not be confiscated from neutral ships in time of war but could only be detained, with reasonable compensation for resulting loss to the proprietors.⁸

With the negotiation of these treaties of commerce and amity John Jay himself had little or nothing to do. The Dutch treaty was entirely the work of John Adams. The Swedish treaty was negotiated by Franklin principally, though Jay was in Paris at the time. The negotiations with Prussia were the result of the instructions issued by Congress before Jay's arrival in the United

States. After the commissioners learned that Jay had taken over the office of the Secretary for Foreign Affairs, they addressed their correspondence to him rather than to the Congress; but it was not necessary for Jay to indite any further instructions on this matter. The treaties are however of such importance in American diplomacy that it has seemed proper at least to mention them in this place. The "plan of 1776" indeed was the basis of all our commercial treaties with foreign nations up to the year 1800, except for the notorious articles of Jay's Treaty of 1794 with Great Britain, of which treaty the basis was British sea power.⁹

We may now proceed to examine with some detail the principal diplomatic problems of the United States while John Jay held the office of Secretary for Foreign Affairs. These appear in our relations respectively with Great Britain, Spain, France and the Barbary States.

CHAPTER II

ANGLO-AMERICAN COMMERCE, WESTERN POSTS, DEBTS

THE British problem which confronted Jay during his tenure of office was that of establishing, under great difficulties, good relations with the former enemy and mother country, particularly in cleaning up several vexing issues which soon arose out of the execution of, or rather, the failure to execute, the treaty of peace.

For Great Britain there had been two possible policies in her dealings with America. One was frankly to accept the new independence of the United States and to cultivate, as the best possible substitute of the old colonial connection, a close and cordial understanding based on a thorough-going reciprocity of commerce, allowing the United States to have all the benefits which it enjoyed under the old navigation laws—these were not inconsiderable—and in addition all the advantages in trade with the rest of the world so confidently expected in America to follow independence. Such a complete reciprocity was a means of cultivating a solidarity of political interests which might possibly end in the breakup of the Franco-American alliance and even the conclusion—so at least some sanguine British thinkers supposed—of an alliance between the new republic and Great Britain. This procedure would have involved on the part of Great Britain the most sincere efforts of which good earnest might have been a quiet withdrawal of British

troops from the United States, following signature of the preliminaries of peace, and immediate restoration of full commercial privileges on the *status quo ante bellum* adjusted to the fact of independence.

The alternate policy was that of regarding the United States *in toto et omnibus* an alien and a rival nation, against whose commerce and political interests Great Britain should be jealously on its guard, as it was, for instance, against France; and of waiting for a suitable opportunity to undo the results of an unsuccessful war and a humiliating peace. It was the latter policy which British statesmen eventually chose, but there were Englishmen who had favoured the first, and some half-hearted efforts were made to pursue this more irenic program. Had these principles been genuinely pushed, and courageously advocated against the opposition of British mercantile interests and the pressure of political expediency, who can say that some of the expectations entertained by their authors might never have materialized?

The title of the preliminary articles of peace between the United States and Great Britain had stated, in proper and unswerving loyalty to the French alliance, that the articles were "to be inserted in, and to constitute the treaty of peace proposed to be concluded between the crown of Great Britain and the said United States; but which treaty is not to be concluded until terms of a peace should be agreed upon between Great Britain and France, and His Britannic Majesty shall be ready to conclude such treaty accordingly." Thus the articles were merely provisional, though for all practical purposes the two belligerents rested on their arms there-

after. On January 20, 1783, Great Britain signed preliminary articles of peace with France, and also with Spain. On that day the United States and Great Britain agreed to an armistice for the formal cessation of hostilities, as did the other belligerents. Even then there was no formal peace. There were still loose ends, like the Newfoundland fisheries, and the Honduras log-cutting servitude, to be cleaned up in further negotiations by Great Britain with France and Spain before the signature of a definitive peace. Formal conclusion of a peace treaty between the United States and Great Britain therefore awaited that event.

While negotiations for the definitive European peace were proceeding there had been an interval available for further negotiations between the United States and Great Britain concerning points which either party would like to have incorporated in the definitive treaty. In England the Shelburne Cabinet had given way to the Fox-North coalition under the nominal leadership of the Duke of Portland, who acted as a "convenient cipher," with Fox in charge of foreign affairs and consequently in direction of these new negotiations with France and Spain, and also with the United States, now recognized as a foreign country. Fox had been a well-remembered friend of conciliation with America and in the forefront of the opposition to Lord North during the American Revolution. He had even opposed the action of Shelburne in keeping the negotiations for preliminaries of peace with the United States in charge of the Department of Home Affairs, rather than granting outright the independence of the United States and then proceeding to make a treaty with them as a foreign

nation, which foreign business incidentally at that time would have fallen under Fox's department in the then Rockingham Cabinet. He had stood before the world as the friend of American independence.

When the new coalition Ministry came in, April 2, 1783, Fox replaced Oswald, at Paris, with David Hartley, who was commissioned to "treat fairly and ingenuously with the Americans" concerning matters to be incorporated in the definitive treaty. Hartley was an old English scientific friend of Franklin. During the war he had maintained a personally friendly correspondence with the great American, the real object of which was to interest him in a separate peace within the British Empire. These efforts persisted after the French-American treaties and reveal an anxious but hopeless desire to split that alliance. Hartley continued them down to the fall of Lord North's Cabinet in March, 1782. After the preliminaries of November 30, 1782, he had enjoyed ambitions of being appointed the first minister to the United States. In the House of Commons on January 29, 1783, he had moved to repeal the prohibitory laws against American trade. He was a fervent protagonist of speedy evacuation of British troops from the United States, and of a quiet resumption of trade relations accompanied by a treaty of commerce on terms of most liberal reciprocity, all this as the precursor of thorough reconciliation and the establishment of an Anglo-American solidarity that would lead to an alliance through which the English-speaking peoples again would present a united front to the traditional enemy, France.

Hartley crossed the Channel with instructions "to treat"—but not conclude—with the American commis-

sioners on articles of a definitive treaty, as well as a treaty which would place American commerce on a pre-war footing so far as concerned the admission *into England* of the produce of the United States without any new duties; in return for this was expected admission into the United States of British manufactures on the same terms as before the war. This did not allow similar admission of American manufactures into British dominions. "With respect to the British West Indies," stated Fox, "there is no objection to the most free intercourse between them and the United States; and the only restriction intended to be laid upon that intercourse is forbidding American ships carrying to those colonies any other merchandise than the produce of their own country." The true object of the treaty, Fox explained, was the mutual admission of ships and merchandise free from any duty or impositions, and the American commissioners must understand that England could not give up her whole navigation law by allowing American vessels to bring other than American goods to Great Britain—that was allowed to no nation.

These instructions seem to have been thoroughly in accord with the earliest advice of London merchants trading to the United States,¹⁰ and they extended privileges not allowed to any foreign nation in the way of exemption from duties. It was England's interest, of course, to get her raw materials as cheaply as she could, and to cultivate as advantageously as possible her market for manufactures. For both these purposes the United States was the principal customer. Simultaneously with these instructions three proposed articles were communicated to Hartley which had been form-

ulated at the behest of English merchants trading to Canada, designed, Fox explained, to secure the property of British subjects trading with the Indians. One of these provided for the equal and free participation by both parties in the use of the different carrying places and waterways interlacing the new frontier line between the United States and British North America, with freedom of taxation on goods passing and repassing the boundary line along these routes. Another stipulated that persons then residing within American boundaries along the frontier and not within the specific dominions of any one American state, might continue to remain there as merchants or otherwise in peaceable enjoyment of their civil rights and in pursuit of their respective occupations, until they should receive notice of removal, and then they should have three years within which to dispose of their property and quit the country. Finally, a limited number of British troops should continue to garrison during those three years the several frontier posts which they then held on American soil. This question of the fur trade and the occupied posts will be mentioned again presently, but suffice it to remark here that these articles were intended to preserve the interests of the traders and allow them a comfortable period of time to wind up their business before the Americans entered into full possession of their western territory, and to keep open for the fur traders of Montreal that great gateway to their commerce with the far-western Indians, the Grand Portage, on the south side of Pigeon River at the head of Lake Superior, which passage had been inadvertently allowed by the British negotiators at Paris to remain on American soil.

Before departing for Paris, Hartley had long conversations with Fox, and according to the envoy, there was an understanding that he should have authority to prosecute his negotiations in line with his favourite theory that a treaty of commerce on the basis of reciprocity was the first step in a great policy of reconciling the United States to a political connection, a "federation" with the British Empire, as soon as the times should be ripe for that next step. Hartley reviewed his grand plan in letters written to Fox a few months later: following a liberal commercial treaty there would be consummated eventually that "natural alliance which ought to subsist between Great Britain and the United States as a *succidaneum* [a word suggested by Fox] of their former connexion." It was in this spirit that he conducted himself in his conversations at Paris with Franklin, Jay and Adams. The "natural alliance" to which he looked would provide: first, mutual defense of American dominions of each party; secondly, the British navy should be extended to the defense and protection of the United States, in return for which the United States should contribute to support and strengthen it by naval material and seamen. This, he thought, "would be nothing more or less than the restoration of the old system," for he would add "an article in the customary form," that in case the respective territories of the contracting parties should be attacked at land by any foreign enemy, they should assist each other with military succours; this would be "an article of equal reciprocity and in effect no more than a stipulation of perpetual peace between themselves." As Hartley explained in other instances, it would effectually break up the French-American alli-

ance. The naval article, he stated, would give Great Britain a right to claim great naval equivalents such as a supply of a certain number of American seamen to serve on board of British ships-of-war during the term of the treaty. The reader today, familiar with the history of Anglo-American relations before 1815, wonders whether Hartley had in mind the forcible impressment of those American seamen to serve on board British ships-of-war, in case perchance the two parties could not always agree on quotas or agreed quotas could not be recruited. Completely to destroy all American obligations to France he had in mind other articles: against the taking of letters of marque by the subjects of either party under penalties of piracy; against the carriage by either party of naval stores to the other's enemy; and the United States was to be bound to furnish to Great Britain a certain number of naval stores annually, by way of "subsidy" in return for the protection of the British navy.¹¹

In the light of the revelations in Hartley's correspondence his negotiations at Paris for the definitive treaty of peace between the United States and Great Britain can be regarded not otherwise than as a subtle and artful attempt by Fox and himself to exploit Franklin's ancient friendship to break up the Franco-American alliance before the definitive treaty was signed by Great Britain's numerous enemies. They little knew the resolute old man with whom they were dealing, nor did they have an adequate comprehension of his perspicacity, nor of the stalwart, the jealous independence of his colleagues, Jay and Adams.

In his conversations with the three American commis-

sioners, Franklin, Jay and Adams, Hartley discovered to them a desire to make the most of a phrase previously written by Franklin in a letter to the Englishman, "sweet reconciliation." Sweet reconciliation, argued Hartley, meant a complete understanding and settlement of all old troubles and the arrangement of the future in the most cordial way, by means of a treaty of commerce on the terms of thorough-going reciprocity. In presenting his new propositions regulating the northern frontier, in the form of six new articles for the definitive treaty, Hartley argued that "the independence of the American States being established, their first consideration ought to be to determine with what friendships and alliances they will enter into the new world of nations. They will look around them, and cast about for some natural, permanent, and powerful ally, with whom they may interchange all *cementing reciprocities*,¹² both commercial and political. If such an ally is to be found anywhere it is still in Great Britain; at least it is certain, that, in looking around Europe, no others are to be found."¹³ The mutual purposes of the French alliance, alleged Hartley, had been fulfilled, with American independence, by both parties. "That alliance, therefore, is completed and terminated without leaving behind it any political principles of future permanent connexion between them."¹⁴

When Hartley introduced his new articles, the American commissioners, acting in full co-operation with Vergennes, agreed in principle to them, except for continuing British troops on American soil, and placing a term of two instead of three years for removal of British subjects and property, following official notice; but they

demanded that these articles be incorporated in a treaty of commerce. They then countered by introducing new and radical articles of their own for the definitive treaty. These articles incidentally would have sanctioned and improved upon the liberal Franco-American principles of maritime law embodied in the existing treaties of the United States with France, the Netherlands and Sweden. They provided: rectification of the northeast boundary line to give to the United States islands in Passamaquoddy Bay; reciprocal repatriation of prisoners and reimbursement of sums spent on them; intervention of Great Britain to protect American shipping in the Mediterranean against the Barbary corsairs; immunity of persons and property of fishermen, cultivators of the earth, artisans and manufacturers in time of war, *as well as merchants and traders with their unarmed vessels, exchanging the products of different places*; and, most important of all, abolition of contraband of all kinds, with the provision that articles "heretofore called contraband, such as arms, ammunition, and military stores of all kinds," might be pre-empted with payment of damages for freight and demurrage, at appraised prices by belligerents, but never confiscated, the identical article which Franklin later wrote into the treaty of 1785 with Prussia. The commissioners also blandly asked whether the United States might be admitted to share with Great Britain log-cutting in the district allotted by Spain to British subjects in Central America. It is needless to say that Fox, to whom Hartley had to refer all possible agreements before signing, found these articles altogether "captious," although Hartley himself seems to have been in favour of accepting them. The refusal of

the British Government to accept them effectually destroyed all hope of additional political articles in the definitive treaty.

Meanwhile Hartley was proposing a treaty of commerce. He was empowered by Fox to *discuss* no more than a "temporary convention" calculated to endure while a durable treaty was being negotiated following the definitive peace settlement. Here Hartley found the American commissioners willing and eager to enter into commercial relations on the terms of fullest reciprocity. He assured that he expected the temporary convention to be followed by a permanent treaty of commerce on the most complete basis of reciprocity. As the basis of the temporary convention he submitted the draft of an agreement permitting American citizens to import into, or export from, any port or place of the territories belonging to the crown of Great Britain, in American ships, goods or produce which might have been so imported or exported before the war, upon payment of the same duties payable on the same goods when imported by British subjects in British ships, provided that this did not extend to any direct intercourse or commerce between the British West Indies and the ports of Great Britain. Similarly, British subjects were to be allowed to export from or import into the United States in British ships all goods, wares, and merchandise as they did before the war. This would not have been exact reciprocity, because the exportation of certain American goods to other British ports before the war had not been allowed, notably manufactures, while there had been no restrictions on British goods or manufactures imported into the American colonies.

The commissioners were willing to accept this imperfect reciprocity because American manufactures were not then of any importance and could not become so within the duration of the temporary convention, and because this proposed arrangement allowed trade between the United States and the British West Indies in American bottoms, one of the most valuable branches of the old colonial traffic.

When the proposal went back to Fox for acceptance in June, that minister hesitated. He had started out by favouring this liberal intercourse; the wartime prohibitory acts against American commerce had been repealed, and English ports opened to American ships and products. Orders were also publicly dispatched to America for the removal of British troops from New York and other Atlantic ports, though they were never carried out until after the definitive treaty. Acting on this, the American states had opened their ports to British vessels. But while Hartley, according to his instructions, quoted above, had been agreeing to direct commerce between the United States and *all* British dominions, opinion in England had meanwhile been crystallizing in favour of treating the commerce of the United States exactly like that of any other foreign nation, particularly in regard to the British island and continental colonies in North America. Much to Hartley's chagrin, Fox began successively to qualify his former instructions, first as to trade in American ships between the islands and British North America, next as to re-exportation of British West Indian produce from the United States to British ports, then prohibition altogether of traffic between the islands and Great Brit-

ain, which latter prohibition had been inserted also by Hartley, as we have noted. Fox had instructed Hartley to negotiate "fairly and ingenuously" but with his knowledge the British spy Bancroft, who had served throughout the war successfully as secretary to Franklin and the other American commissioners in Paris, left for America to report on commercial matters and on the qualities and stamina of the American Union. Reports from America soon tended to convince English traders that there would be little danger, during the existing political condition of the American Confederation, of trade reprisals against England. The navigating interests, particularly those interested in the West Indian traffic, began to organize and put pressure on the Government not to allow the Americans into the sugar islands. Fox soon found that one had to be "mighty wary" in dealing with these people. Hartley himself was still unable to sign anything, and saw his Government wavering and inclining to back out of what had seemed at first a fixed policy of commercial reciprocity. Suddenly he was shocked to learn from the American commissioners themselves, what Fox had neglected to reveal to him, that on July 2, 1783, a British order-in-council had prohibited trade in American ships between the British West Indies and the United States, reserving that commerce for the British flag alone.

This destroyed any confidence in Hartley's power to bind his Government to favourable articles of commerce, temporary or otherwise. The definitive articles were now ready between Great Britain, France and Spain. Fox instructed Hartley to sign the American prelimi-

nary articles as they stood, to serve as the definitive treaty, and to continue his negotiations for a treaty of commerce. The order-in-council closing the West India trade need not stand in the Americans' way, he wrote; the lifting of it might be offered as an equivalent for American concessions in any commercial treaty! After signature of the definitive treaty, September 3, 1783, Hartley returned home to confer with Fox, and later crossed to Paris to exchange ratifications, but further negotiations with Franklin, Jay and Adams proved fruitless. The Fox-North coalition went out of power in England, to be succeeded in 1784 by William Pitt as Prime Minister. Pitt had been a champion of freest intercourse between all British dominions and America and had personally introduced in the Commons, March 3, 1783, a bill to that effect. He, too, a man of greater straightforwardness than Fox, now succumbed to the British mercantile and navigation interests. The order-in-council of July 2, 1783, remained the policy of Great Britain for the next eleven years. Hartley was abruptly recalled by the new British Foreign Minister, the Marquis of Carmarthen. Tenacious of his grand plan, Fox's envoy lingered in Paris to talk more with Franklin, only to find himself quickly relieved of his commission. Humiliated and heavy with disappointment, he returned to England.

The decisive factor in bringing about this change in British opinion was the appearance in 1783 of the first edition of Lord Sheffield's famous pamphlet entitled "Observations on the Commerce of the United States." According to the historian Gibbon, Sheffield's worshipful friend, it proved the salvation of the British navi-

gation acts, themselves the palladium of English prosperity.

Sheffield's pamphlet appeared as a reply to men like Hartley, Shelburne, Pitt and others who had favoured resuming trade relations on the old basis. He pointed out that now that the United States was independent Great Britain was relieved from the heavy financial burden of protecting them, while at the same time the old habits of trade, the predilection of the Americans for the English language, law, customs, and goods, were continuing and would continue unabated. He demonstrated that English merchants were the only ones who could extend to American buyers credits of sufficient time to capture their orders. He presented elaborate and cogent figures to show that the American trade was, Britain's without making great efforts for it. He argued that it was for the benefit of the interests of the Empire to give to Canada the monopoly of supplying the British West Indies with foodstuffs, lumber and other necessary supplies, even though this made them cost more to the planters there; that it was for the good of British navigation interests to exclude American ships from those islands and from British North America, exactly as Great Britain did with all other foreign nations. He called attention to the political impotency of the American Congress, unable to control the commerce of the several states with foreign countries, and exclaimed exultantly: "It will not be an easy matter to bring the American states to act as a nation. They are not to be feared as such by us. It must be a long time before they can engage, or will concur in any material expense. . . . We might as well dread the effects of combinations

among the German as among the American states, and deprecate the resolves of the Diet, as those of Congress." All Parliament had to do, he said, was to "sit still." The American trade would come to England of its own accord, and it might be regulated for Britain's interest.

Sheffield was correct. Statistics on imports into the United States when the first federal tariff law went into effect, in 1789-1790, show that nine-tenths of our imports then came from Great Britain, most of them from England. As this change, or rather, this crystallization of public and official opinion toward America was going on in London, reports began to arrive from Bancroft and other secret British observers in the United States, indicating that the American Union, now without the stiffening medicine of war spirit, was weakening and threatening to fall apart, that Congress was not able to exert authority over the several states, nor to execute the terms of treaties, that, particularly, it had no control over commerce.

Lord Sheffield's assurances that Congress was no more to be feared by Parliament than the Diet of the German States appeared abundantly justified. But was Sheffield statesmanlike in believing that, for the sake of Anglo-American cordiality and solidarity, looking at the matter purely from the British point-of-view, that Great Britain's larger political and international interests were better served by such a policy?

Jay himself while in Paris, with no knowledge, of course, of the ulterior dangers of the Hartley negotiation, had been disposed to meet England in a temporary commercial convention, based as much as possible on the principles of reciprocity while the details of a

permanent treaty of commerce were being worked out. "They mean to court us," he wrote, April 22, 1783, of the English, "and in my opinion we should avoid being either too forward or too coy. I have no faith in any court in Europe, but it would not be proper to discover that sentiment." He himself proposed without success articles for such a convention which would have allowed greater commercial privileges between the United States and Ireland than before the Revolution, and another article, over fifty years ahead of its time, by which both nations would agree not to import slaves into the United States from any part of the world, "it being the intention of the said States entirely to prohibit the importation thereof." But the lack of authority to sign anything, displayed by Hartley, and the latter's wavering course, soon persuaded Jay that the Cabinet behind Hartley was divided. When he visited London he found this to be true, with an increasing feeling of contempt for the ability of the American Congress to make any commercial retaliation. The proclamation closing the West India trade convinced Jay of the futility of Hartley's assurances. He sailed for home with the set conviction that only by retaliation with an American navigation system, and this through a national government of the United States, would Great Britain be induced to consider respectfully American commercial interests. "If European commercial restrictions produce unanimity," he wrote to the Secretary of Congress, April 7, 1784, "and tend to raise a *national* spirit in our country, which probably will be the case, I shall think them blessings. It is time for us to think and act like a sovereign as well as a free people, and by

temperate and steady self-respect to command that of other nations. It is but too much the fashion to depreciate Congress, and I fear that, as well as many other of our new fashions, will cost us dear." Jay's new duties in America were soon to give him too many melancholy proofs of the necessity for a national government.

Jay became Secretary for Foreign Affairs of the Congress, and John Adams went from Paris to London as the minister of the United States to the Court of St. James. Under the Fox regime assurances had been made by Hartley, and also to Laurens in London by Fox, that an American minister would be received. "I only wish one were here now," Fox had said to Laurens. But the new Government and the Court received Adams coldly. British opinion of the United States as an effective power in the international relations of the world had sunk to its lowest ebb. There is a vivid contrast in the terms of polite respect, or almost reverential deference, which Oswald and Hartley so studiously displayed towards Franklin in Paris, and the cold and insulting demeanour which the British Court discovered towards John Adams in 1785. The previous Administration had promised to send a minister to the United States if one were sent to England, but the Pitt Ministry took no step to do so. Disgusted at his reception, and convinced that the impotent Congress could do nothing towards securing from Great Britain even conventional respect for its interests and dignity, Adams closed up the legation and went home.

Let us now turn our attention across the Atlantic to the question of western posts, British debts, and other

issues which arose out of the treaty of independence to confront John Jay, as Secretary for Foreign Affairs.

The first reaction of the British Government to the complaints of the Montreal traders was to attempt to put into the definitive treaty of peace new articles which would secure the perpetual use of the Grand Portage and other land and water routes interlacing the boundary line, and to allow British garrisons to possess the frontier posts on American soil for three years more while the British traders were winding up their business and withdrawing to their own side of the line. Failing to get this into the treaty, what should be done? The candid historian is forced to record that on the eighth of April, 1784, Lord Sydney, the Secretary of State for Home Affairs in the Pitt Government, sent instructions to the Governor-General of Canada not to withdraw the garrisons from the frontier posts on the ground that the treaty in saying "all convenient speed" did not fix a definite time. The garrisons meanwhile had long since been withdrawn from New York and other Atlantic ports. Thus were the Americans duped! The following day George III proclaimed the ratification of the treaty of peace and solemnly enjoined his subjects one and all faithfully to observe all and singular the things that were contained in it. His own Minister had violated it the day before.

Sydney, in conveying these orders, had explained to the Governor-General that since the United States had not complied with even one article of the treaty that evacuation might be delayed "at least until we are enabled to secure the fur traders in the Interior Country and withdraw their property." It was not incum-

bent on the United States to comply with the treaty until after ratifications had been exchanged, therefore Sydney could not justify in this way the coolly premeditated violation of it on the part of Great Britain. It is indisputable that no sooner had the treaty been ratified than Congress proved unable to prevent some of the individual states from putting obstacles in the way of collection in sterling money of pre-war debts to British creditors.¹⁵ Whether this action on the part of the states was due to exasperation over the British failure to evacuate the posts, as the treaty had required, or to the carrying off of negro slaves by British troops when leaving the Atlantic ports, or to the sheer impotency of the Congress, may be meditated on, but certainly it was not due to any secret order sent out by Congress, on the eve of ratification of the treaty, to the states directing them to evade it.

Having decided not to get out of the posts, the British Ministers were eager for an excuse, and they soon found one when the American Congress was not able to execute the treaty in all its terms. They then maintained they would hold the posts until the debts were paid. Thus an impasse. The one-sided diplomatic relations between the two countries were broken with Adams's withdrawal from England. The Canadian officials of the British crown, with the assistance of their well organized Indian department, roamed at will on American soil north of the Ohio, issued to the hostile Indians munitions and other supplies with which to resist the American troops which had been organized to pacify the natives in the West, and assured them that they would have at all times the support of the King.

To keep alive this Indian warfare was, of course, to create a buffer of protection between the British garrisons at Niagara, Erie, Detroit and Michilimackinac,¹⁶ and the troops of the United States.

When Jay took up his office he expressed himself strongly about the occupation of the posts and about British activities with the western Indians. "They hold the posts," he wrote to John Adams at London, "but they will hold them as pledges of enmity; and the time must come when the seeds of discontent, resentment, and hatred, which such measures always sow, will produce bitter fruit." Adams reported that Carmarthen replied, in answer to his request to know if the posts would be evacuated, that Great Britain was determined to hold them until the debts were paid. This dispatch was sent to Congress, which referred it to Jay for report in 1786. In the spring of 1786 Jay had agreed with the Spanish chargé at New York on articles of an alliance and a Spanish mediation as a means of ejecting the British from the posts. For reasons which will be described later on, this device failed. Even at this time he felt that Great Britain had some justification for holding the posts. Jay appears by the autumn of 1786 to have become honestly persuaded that the United States was violating the treaty by not causing the states to remove legal impediments in the way of collection of the debts, and that Great Britain could not be much blamed for keeping garrisons in the posts until this was done. He made a long report, October 13, to that effect to Congress in secret session. In it he also took up the question of negro slaves who had been carried off by British armies in violation of the terms of

the peace, and held that though this was technically in violation nevertheless the terms of the British commander emancipating those negroes made their return inconsistent with the treaty in a highly humanitarian way, so that monetary compensation rather than delivery of the slaves themselves ought to be accepted.

At this time British interests in the United States were represented only by consuls. Sir John Temple, the consul in New York, acted almost in a ministerial capacity, though of course without any formal powers. He maintained a pretentious and fashionable household which was the envy of the foreign ministers at that capital, entertained lavishly, and was soon on terms of social and personal intimacy with Jay. The report above alluded to brought action in the shape of a resolution by Congress to the several states requesting the removal of the legal obstacles. A vain request, utterly impossible to enforce, it was ignored. The report was made to Congress, and deliberated on in secret session, we repeat, but Jay confidentially divulged its nature to Sir John. He moreover declared to that Englishman that it was a full acknowledgment that Carmarthen's reply to Adams was in its main contentions a just one. Jay would hardly have made this gratuitous statement if he could have read the correspondence of the British Ministry with its Canadian official. That a man in his office should have imparted such confidential information to the British consul, from whose immediate reports to his own Government we get it today, must perforce explain the continued determination of that Government not to evacuate the posts. From that time on, until Alexander Hamilton,

as Secretary of the Treasury in Washington's Administration, began his efforts for an Anglo-American entente, Jay remained the most popular in British councils of any American in official station.

Thus ended Jay's diplomacy with Great Britain.¹⁷ So far as commerce, the other great issue, was concerned, nothing could be done towards a satisfactory arrangement until the Articles of Confederation should be amended so as to give Congress control over commerce and the capacity of reprisal in tariffs and trade prohibitions.

Jay's handling of British problems can hardly be called a great success, but even if he had been more circumspect in his relations with Temple, he could have accomplished nothing. He was hopelessly hampered by the limitations of the power whose agent he was, the Continental Congress. Let us now observe how he conducted American relations with Spain. It will first be necessary briefly to survey the situation of affairs between that power and the United States in 1784 when Jay took up his office.

CHAPTER III

THE MISSISSIPPI QUESTION AND THE SOUTHERN BOUNDARY

IN his dealings with Spain, John Jay found himself confronted not only with the superior force of one of the strongest powers of the day in actual military occupation of territory claimed by the United States, and with vast interests at stake in that occupation, but also facing claims which had back of them strong juridical arguments. The British occupation of the frontier posts was an arbitrary act in violation of the peace treaty, which at the time of its commission did not have any justification by way of reprisal, though Jay, as his report to Congress testifies, did not understand it that way. Spain held a position so well buttressed in international practice, treaties and international law that it was exceedingly difficult if indeed possible to demolish it. All this was strengthened by actual and continued possession. The issues between the United States and Spain in 1785 when Jay took charge of the Department of Foreign Affairs may be resolved into these: the question of the Mississippi, the southwestern boundary of the United States, the relations of both nations with the Indians of the southwest who dwelt within the disputed territory, and commercial affairs.

The question of the Mississippi was one of the most important issues in the history of our diplomacy, if we are to measure it by the consequential events for Amer-

ican territorial expansion which resulted successively from the settlements of various stages of that controversy. It was whether citizens of the United States had a right after independence to navigate freely the Mississippi River to the sea. Connected with it was the southwest boundary dispute. The Treaty of Paris of 1763, in which France ceded to Great Britain all her territory east of the river, except the "island" of New Orleans, placed a servitude on the sovereign control of that river by reserving for the subjects of Great Britain the right to enjoy its navigation from its source to the sea. Such a servitude had been necessary, because of the retention by France of the "island" and consequently of both banks of the river as far north as the Iberville River. A few days after the treaty, Louisiana and the "island" of New Orleans were ceded by France to Spain, which nation of course took over the territory encumbered with the servitude. British subjects continued to exercise their right to the navigation of the lower reaches of the river until the outbreak of hostilities between Great Britain and Spain, during the war of American independence, which *ipso facto* abrogated all treaty obligations between the two belligerent powers, including that in regard to the Mississippi. The war resulted in the conquest of the Floridas by Spain. West Florida under British jurisdiction had been bounded on the north by a line due west, from the mouth of the Yazoo to the Chattahoochee, in roughly $32^{\circ} 25'$ north latitude. The United States, on the other hand, insisted that its peace treaty with Great Britain recognized our southern boundary at 31° in this quarter. Whether placed at 31° or further north at the line of the Yazoo

the boundary of Spanish territory on the east side of the river had been moved considerably farther north of the old line of the Iberville, and consequently a broader bar of exclusively Spanish soil on both banks had been placed across the lower stretches of the stream. The treaty of peace between Great Britain and Spain in 1783 had ceded the Floridas to Spain without mentioning either boundary.¹⁸

The definitive Anglo-American treaty had stipulated that "the navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great Britain, and the citizens of the United States." The Anglo-Spanish treaty which ceded Florida had said nothing about that navigation. Which was to govern the question, Great Britain's treaty of peace with the United States or her treaty of peace with Spain? Spain naturally held that its own treaty governed its position as to the boundary of Florida and the question of the Mississippi, that Great Britain in its treaty with the United States had given title to things it no longer possessed, and that the proof of this was the silence of the British treaty with Spain on these very points. Spain continued to keep a garrison at the post of Natchez, some forty miles above the line of 31°, and to contend that the boundary of British Florida went *at least* as far north as the line of the mouth of the Yazoo. By a royal proclamation issued from New Orleans, the King of Spain definitely announced in 1784 that the free navigation of the river, which had been allowed as a favour to American citizens during the war, was henceforth closed. Subsequently a system of taxes and tariffs on American produce com-

ing down the river to New Orleans was devised and levied.

By 1785, when this proclamation became known in Kentucky, there were already on the lower Ohio and its tributaries, the Tennessee and Kentucky, nearly 50,000 American settlers, most of whom had come in since the end of the war. They were the first of that great stream of westward-marching pioneers which was within a generation to spread over the Ohio Valley and to penetrate across the Mississippi. Some of them had just begun to gather in a surplus of tobacco and wheat, the first fruits of their new adventure, with which they hoped to pay for the expenses of their emigration from the eastern side of the mountains, and which was the first tangible results of their labour, their exposure, their hardships, and the first sign of future prosperity for themselves and their children. There was only one way to get this produce to market—that was down the Mississippi. It was easier to transport a barrel of flour from Pittsburgh to Philadelphia by rivers and sea than by the axle-breaking trails that connected these two Pennsylvania cities. Whoever controlled the mouth of the Mississippi had a decisive grip on the very livelihood of these constantly increasing thousands of Kentucky and Tennessee settlers. In earnest language the legislatures of the states of Virginia and North Carolina petitioned the Congress to secure from Spain a recognition of their right to navigate the river from its source to the sea. The demand was championed by all the states south of the Potomac.

The uncertainty of the boundary left in dispute between the United States and Spain a large area of

territory inhabited by the Choctaw, Chickasaw, Cherokee, and, in part, the Creek, tribes of Indians. As a means of enforcing their claim to sovereignty over this land, and of creating a buffer of protection for their garrisons in West Florida, as well as for strengthening their control of the lower Mississippi, the Spanish colonial authorities at New Orleans entered with these several Indian tribes into treaties concluded at Mobile and Pensacola in 1784 and 1785. They succeeded in binding three of them (the Cherokee were not brought into treaty relations with the Spanish until 1793) to recognize a Spanish protectorate which guaranteed to them possessions of their tribal territories. To the treaty with the Creek a proviso was added, limiting the guaranty to that territory "comprehended within the lines and boundaries of His Catholic Majesty our Sovereign," for a part of the land inhabited by this tribe was comprised within the undisputed area of the state of Georgia. The boundaries of the several tribes were not defined. In these treaties the Choctaw and Creek agreed to defend if necessary with their lives and property the provinces of Louisiana and to accept for the execution of that pledge the military orders of the Spanish governors. The treaties did not violate the uncontroverted rights of the United States, because they were with tribes dwelling within territory in which Spain had as good a title as the United States. The Congress straightway made treaties with the Choctaw, Chickasaw and Cherokee fixing a definite boundary for their tribal lands and placing the Indians under the exclusive protection of the United States and *no other sovereign whatsoever*. The state of Georgia

made a somewhat similar treaty with the Creeks which had the unrepresentative assent of the tribe.

As long as the boundary line remained uncertain the agents of both countries intrigued actively for the control of the trade and the political sympathies of these several tribes. The Spanish governors furnished them with arms and ammunition in exactly the same way that the officials of the British Indian department in Canada gave out supplies and munitions to the tribes in undisputed American territory north of the Ohio. Both American and Spanish agents circulated among the tribal towns and the whole region was steeped in native intrigue. On the whole the Spanish were more successful in holding the affections and the power of the natives because they did not want their land; they wished rather to preserve the tribes in their natural habitat as a buffer for the resistance of American westward emigration and for the protection of Spanish outposts on the Mississippi. The settlement of this Indian question could not be reached until the boundary itself was agreed upon. Until then the new western settlers were exposed constantly to Indian warfare—another motive for the southern states to press Congress to settle in a treaty with Spain these vital matters of boundary and navigation.

As to commercial relations, the states of the Confederation in which navigating and trading interests were powerful, were anxious to establish with Spain, as with the other nations of Europe, treaties of commerce which would admit American ships and products on the same basis as those of the subjects of other powers. A brisk trade in provisions and fish had already sprung

up with Spanish peninsula ports, which was dependent upon the sufferance of foreign municipal regulations. Americans would also have liked to be allowed to trade with the ports of Spanish colonial possessions in America, particularly with New Orleans and Havana, a commerce which had been open to them in wartime by virtue of special dispensations of the Spanish crown, and which was abruptly closed after the ratification of peace. Aside from this latter point of admission into Spanish colonial ports, which Spain then permitted to no foreign nation, the matter of commerce might be expected to be susceptible of comparatively easy adjustment.

The American commission for the negotiation of treaties of commerce with European powers, of which Jay had been a member, and the work of which we have already described, approached the Spanish ambassador at Paris, the Count d'Aranda, in September, 1785, exhibiting to him full powers for the negotiation of a treaty of commerce and amity with Spain. After consultation with his home Government that envoy replied that it was not the custom of Spain to treat of such affairs upon the soil of a third party. The commissioners refused to go to Madrid. This overture however resulted in the beginning, in America, of direct negotiations between the two governments. It was Spain's policy if possible to secure at the start from the United States a recognition of its claims in North America. Floridablanca decided to send a plenipotentiary to reside near Congress for the settlement, according to Spain's contentions, of the several issues between the two countries. For this mission, with the title of *encargado de negocios*, was appointed Don Diego de Gardo-

qui, who had been in charge of relations with Jay during the latter's unrecognized presence at the Court of Madrid during the Revolution. Gardoqui knew English well and was thoroughly conversant with American affairs. What is more, he knew Jay well.

The *encargado* set out for New York via Havana in 1784, instructed to negotiate a treaty with the United States which should (1) recognize the exclusive right of the King of Spain to the navigation of the Mississippi where it flowed between Spanish banks; (2) settle the boundary according to a line which would be laid down for him by Bernado de Galvez, the Captain-General of Louisiana and Cuba, with whom he was to confer at Havana, and who was familiar with Florida, having himself conquered it for the King of Spain during the last war; (3) agree to a treaty of commerce which would admit American ships and commerce upon a most-favoured-nation basis into Spanish peninsula ports and the Canary Islands only. He was to emphasize the specie value of this trade, which was one of the few that brought a return of hard cash to the eastern and northern states, and to hold forth such a treaty as inducement to those states to accept the cloture of the Mississippi. If necessary to secure recognition of Spain's exclusive control of the Mississippi, Gardoqui was allowed to propose a defensive alliance between the two countries for the mutual guaranty of their American territories. At Havana, Galvez laid down the boundary instructions more precisely. They recounted the fact that Spain had a claim not only to the latitude of the mouth of the Yazoo River, the northern boundary of West Florida under the British, but actually as far

north as the Ohio River, by virtue of conquest of British territory. He was to maintain this claim but might agree to the line of the Yazoo if the Americans would give up their claims to the Mississippi. As a last concession he might even accept a line running diagonally from the mouth of the Yazoo to the junction of the Chattahoochee and Flint.

Upon Gardoqui's arrival in New York in the summer of 1786, John Jay was given full powers to treat with him, but Congress by formal resolutions bound him with two indispensable conditions: he was to make no treaty which did not recognize the right of citizens of the United States to the free navigation of the Mississippi, or which did not accept the latitude of 31° as the boundary between the United States and West Florida. Forced to stand on these two points, Jay was unable to conclude any treaty in the negotiations that went on throughout the ensuing winter. But there is plenty of evidence to show that he was gradually weakening to the Spaniard's arguments. Gardoqui well knew his man, as we have said. He had suggested for incorporation into his instructions an injunction to cultivate and to entertain both Jay and Mrs. Jay. The instructions were thus written, and the envoy received a liberal expense account for this purpose. In making this recommendation Gardoqui had stated:

“The American, Jay, who is generally considered to possess talent and capacity enough to cover in great part a weakness natural to him, appears (by a consistent behaviour) to be a very self-centered man (*es hombre muy interesado*), which passion his wife

augments, because, in addition to considering herself meritoriously and being rather vain, she likes to be catered to (*gusta que la obsequien*) and even more to receive presents. This woman, whom he loves blindly, dominates him and nothing is done without her consent, so that her opinion prevails, though her husband at first may disagree; from which I infer that a little management in dealing with her and a few timely gifts will secure the friendship of both, because I have reason to believe that they proceed resolved to make a fortune. He is not the only one in the country who has the same weakness (*flancho*), for there are many poor persons (*muchos necesitados*) among the governing body, and I believe a skilful hand which knows how to take advantage of favourable opportunities, and how to give dinners and above all how to entertain with good wine, may profit without appearing to pursue them."

He added that he believed Jay would control the votes of six or seven states in Congress, because the states of the north were dependent upon three or four articles of commerce that made up the exports to Spain.

In this connection we must hasten to say, for the relief of the reader, that a careful examination of Gardoqui's annual expense account shows nothing more than a few dollars for small gifts in viands and wines, and for entertainment, placed against the Jays. There is absolutely nothing questionable in the Secretary's relations with the Spanish *encargado*, nor anything which can reflect upon John Jay's honour, which remained impeccably clean to the end of his remarka-

bly virtuous life. It is well known that at this time he accepted (it was after Gardoqui had made the suggestion to his court) the gift of a Spanish stallion from His Catholic Majesty, but it was only after first having expressly asked and received the permission of Congress to do so. But though Jay was a man of untarnished honour, the candid student must admit that his excessive vanity did make him the prey of clever diplomats who cared to work on this weakness. Gardoqui was careful to rent as pretentious a house as possible in New York, and to entertain lavishly. His salary, to say nothing of his expense account, was between three and four times that of the Secretary for Foreign Affairs. Among his frequent guests were the Jays, and he soon established himself on terms of cordial intimacy in their home. Mrs. Jay he accompanied to numerous dances and public festivities. Anent this he wrote back complacently to Floridablanca, "I will do everything which appeals to me for the King's best interest."

During the winter of 1785-1786, Jay and Gardoqui arrived at an agreement on articles for a treaty, with the exception of the two principal issues, on which Jay's instructions then permitted no yielding. It was to be a treaty of *commerce and alliance* to last thirty years. The commercial articles were written on a basis of reciprocity between the United States and Spain's home ports including the Canary Islands, the subjects or citizens of each party to be given within the domains of the other the treatment of nationals in matters of duties. A reservation was made in favour of tobacco imported into Spain, and a schedule of tariffs was to be worked out in a separate convention. Each party guar-

anted the other's territory in America, as it should be determined in the final treaty, against attack by a third power. The King of Spain agreed to purchase every year, for cash money, at the world price, "a quantity" of hard wood for building purposes. He also agreed to mediate between the United States and Great Britain to secure the recovery of the posts on the northern frontier, and to see that the United States "get justice, by force of arms if otherwise it cannot be promptly secured."

These commercial articles seemed particularly favourable. The purchases by the King of Spain appeared to offer a means of securing the hard money so much needed as circulating medium. The proposal for alliance, which Jay never disclosed to Congress, looked like a set-off to the arrogant British occupation. Never before had the United States been able to get more than most-favoured-nation treatment in its treaties with European powers, though actually treatment as nationals in the case of Spain did not mean as much as the most-favoured nation treatment, because foreigners in Spain had trading privileges better than the King's own subjects.

The issue of the Mississippi remained unsettled, and on this depended the treaty. Sometime during the spring of 1786, Jay became convinced that—it being impossible to get from Gardoqui any concession in regard to the Mississippi—it would be well for the United States, in order to secure the advantages which the agreed articles offered, to agree to *forbear* to use the navigation of the Mississippi during the term of the treaty, at the same time being careful not to concede

the principle of our *right* to it. Because the positive instructions of Congress stood in his way, he broached this matter to James Monroe of Virginia, suggesting that a committee of Congress might well be appointed to govern him in lieu of his existing instructions. Monroe, a delegate from the state of Virginia to the Congress, was under express instructions from his state never to vote for any relinquishment of American rights to the river. The result of Jay's disclosure to him of his intentions was to group the forces of the southern states in a solid phalanx to prevent a change in Jay's instructions to enable him to consent to any cloture, under any theory, of the Mississippi—a matter of such vital interest to the western constituents of all the states south of the Potomac.

By agreement with Gardoqui, the Secretary for Foreign Affairs presented a report to Congress, May 23, 1786, on the state of their negotiation. This included a letter from Gardoqui to Jay arguing for the acceptance of a treaty of commerce and setting forth its advantages to the ocean-going trade of the eastern states. He assured him that if nothing be said in the treaty as to difficulties with boundaries and navigation (i.e., of the Mississippi), the King would consent to guarantee the United States their rights and dominions as they should be left by the new treaty. He also promised on his own part to pray the King to cancel the debts of the United States arising out of loans during the Revolution.¹⁹ Nothing was said by Jay or revealed in Gardoqui's letter, which he transmitted, about the articles that they had already initialed for the guaranty, or about the provision for Spanish mediation to recover the

posts occupied by Great Britain. Appearing before Congress, Jay warmly advocated that the United States *forbear* during the term of the proposed treaty, to exercise its continuing right to navigate the river, and thus to make a treaty possible.

For the ratification of any treaty the votes of two-thirds of the thirteen states were necessary. The seven northern states, a bare majority, agreed to change Jay's instructions so as to permit him to make such a treaty as he recommended. The southern members of the Confederation maintained vehemently that this was not constitutional, and demonstrated that the treaty never could be ratified except with a two-thirds majority which would require their acquiescence. They saw in Jay's proposal a project to barter away their interests in the navigation of the Mississippi in exchange for commercial privileges to eastern seaport towns. There is no doubt that many eastern delegates in Congress were for Jay's proposal because it so favoured their own sectional interests, and that they wanted to close the Mississippi in order to restrict emigration to the West because that had a cheapening effect on the value of the back lands of the eastern states. The memory of this a year later nearly defeated the ratification of the federal Constitution by the convention in the key state of Virginia, despite the fact that the proposed Constitution required a two-thirds vote of the Senate for ratification of any treaty.

With the prohibitions of his first instructions thus lifted by a bare majority, Jay proceeded again to take up the question of the Mississippi. Gardoqui now would not listen to any article which did not expressly recog-

nize the exclusive right of Spain to that navigation, nor was he content to let the treaty go silent about it, for fear of the implications which silence might strengthen. Jay was not willing to relinquish though he would have agreed to forbear to use the right of the United States. This did not prevent the two from agreeing on a formula sufficiently ambiguous to cover the position of each side:

“It is expressly stipulated and concluded that His Catholic Majesty and the United States are freely and in common and without any interruption from each other to use and navigate the said river from its source down to the southern boundary of the said United States, and that the United States will faithfully observe that limitation and not navigate or use the said river below, or further down, than the said boundary in any part of its course therefrom through His Majesty’s countries to the mouth of the river.”

Was this a forbearance, or a renunciation?

In return for Jay’s agreement on this vital article, Gardoqui agreed to Jay’s proposition to refer the disputed boundary to a joint commission, provided Congress would agree to it.

The solemn protests of the southern delegates had been a warning that a Mississippi article like this could not succeed. As months wore on and the Philadelphia Constitutional Convention approached, it became apparent that their viewpoint was gradually capturing more and more northern support. Wisely, Jay did not attempt to put the treaty with this Mississippi formula before Congress. Congress itself gave way in 1788 to the new

government of the Constitution, and as President Washington's Administration was getting started, Gardoqui, who had remained to witness and describe the inauguration, left for Spain. We shall have occasion to follow his diplomacy further in the next volume.

Gardoqui himself had abandoned all hope, or even desire, for a treaty. Before 1787 he had been very anxious to get Congress committed to a treaty which would recognize the cloture of the Mississippi, because he feared the increasing menace to the security of Louisiana of the Kentucky country, so rapidly filling up with settlers, every one of which was a potential soldier skilled in frontier warfare. But in the winter of 1786-1787 he had succeeded in opening up contact with a conspiracy of separatists in Kentucky and Tennessee. Those in Kentucky, under the leadership of the American apostate, James Wilkinson, held out possibilities of a durable connection. Gardoqui became convinced that he could use this "Spanish conspiracy" to neutralize any danger which might be imminent in the shape of a descent by lawless western American settlers on New Orleans to settle the boundary and secure by force the navigation of the river. The threads of the Spanish conspiracy were taken up by the Governor of New Orleans with Wilkinson. For the next eight years Spanish diplomacy relied on this sinister connection as a solution of the American problem, and remained entirely apathetic to the idea of any treaty.

In the opinion of many people, a severe criticism can be levied against John Jay for allowing himself to be persuaded by Gardoqui into accepting a formula which would have denied to American citizens the navigation

of the river, especially when he did so over the heads of such a great body of his fellow citizens. It is certain that only the determined opposition of the southern states prevented a step which would have crippled some of the best chances for future American expansion. In extenuation, it must be pointed out (1) Jay could not read the marvelous future chapter of accidents which was to bring eventually out of this Mississippi question the cession of Louisiana; (2) he believed that he was only forbearing, for a limited number of years, the exercise of a right which continued to exist and which could be revived when the United States had become strong enough to assert it effectively; (3) his Government had absolutely no force to oppose to one of the most powerful monarchies of Europe; and (4) George Washington, himself a Virginian and abundantly interested in the development of the West, agreed with Jay on the wisdom of this policy. We can only extenuate what today seems to every American the mistaken policy of an honest man. History has justified the wisdom of the southern states in blocking the treaty.

Spain continued to exercise her control over the river, and even to arrest American citizens venturing into the disputed territory. In April, 1787, Jay in vain asked for express instructions on the Spanish negotiations, but not until after the Philadelphia convention did Congress take action. It then called for another report by Jay. The Secretary tried to get action by stating that the undoubted right to navigate the Mississippi ought to be represented in a firm and decided manner. "Your Secretary is further of opinion," he added, "that in case of refusal, it will be proper for the United States then to

declare war against Spain, there being no respectable middle way between peace and war, it will be expedient to prepare without delay for the one or the other: for circumstances which call for decision seem daily to accumulate."

After holding up these alternatives to his proposed treaty, he admonished that: "If Congress conceive that a treaty with Spain on the terms proposed [i.e., forbearance to use the navigation for a term of years] is eligible, the sooner these ideas are communicated to your Secretary the better. If an idea of obtaining better terms should be entertained, the sooner that question can be decided the better; and for that purpose, your Secretary thinks it would be well either to place some other negotiator in his stead, or to associate one or more persons with him in the business. . . . He takes the liberty of observing, that a treaty disagreeable to one half of the nation had better not be made, for it would be violated; and that a war disliked by the other half, would promise but little success, especially under a government so greatly affected by popular opinion."

This dilemma did not convince Congress of the necessity of adopting the forbearance article, nor of energetic protests to the Spanish Government, nor of preparation for war. The increasing respect for the interests of the West brought the passage of a resolution specifically denying that Congress was disposed to treat with Spain for the surrender of their claim to the navigation of the river Mississippi and:

"Resolved, that the free navigation of the river Mississippi is a clear and essential right of the United

States, and that the same ought to be considered and reported as such.

“Resolved, that no further progress be made in the negotiations with Spain by the Secretary for Foreign Affairs; but that the subject to which they relate be referred to the federal government, which is to assemble next March.”

Thus was Jay relieved of this problem, which we shall take up again in the next volume of this series as one of the major issues of foreign affairs in President Washington's Administration.

CHAPTER IV

THE FRENCH ALLY: BARBARY PIRATES

I

THROUGHOUT Jay's administration of his office our relations with France continued most cordial. Jay fulfilled his duties in the maintenance of this desirable condition, and in his work to secure better trade concessions from the French—above all, in his attitude towards the consular convention with that Government—he performed valuable services for his country. He did not possess the enthusiasm for France which the minister of the United States to the Court of Louis XVI, Thomas Jefferson, exhibited at this time so abundantly. Jay's suspicions during the negotiations for peace at Paris in 1782, that Vergennes was full of duplicity and equally as willing to injure as to favour the United States provided it was for the interest of France, were all reflected in a personal coolness toward that Court, albeit his conduct in official dealings with French ministers was always unexceptionable. Fortunately, no serious issues came up between the two countries during Jay's tenure of office.

Writing to Jay from Paris, October 16, 1784, to congratulate him on his appointment as Secretary for Foreign Affairs, William Bingham observed to his friend: "No one is better acquainted than you are with the system of this *Court*, and no one is more jealous of their country's honour, in essential points. You may well imagine, then, that your appointment was *not regarded*

with satisfaction, nor will the congratulations that you will receive on it from certain quarters be *sincere*.”

“Your observations in France,” replied Jay, “respecting a certain event coincide exactly with what I expected on that subject. Indeed, the many interesting remarks spread through your letter appear to me to have weight.”

It was therefore with no predilection for France, nor, indeed, for any other country, that Jay began his duties. One of the first things which came before his attention was that of a consular convention. The treaty of commerce of 1778 had stipulated the liberty of each party to have in the ports of the other consuls, vice-consuls, agents and commissaries, whose functions were to be regulated by a particular agreement. Congress sent to Franklin the plan of a consular agreement, with instructions to put its content, if not its actual wording, into formal articles. Franklin signed a convention with Vergennes in 1782, which departed very materially from the plan of the scheme as well as from the phraseology. When Jay took up office it had not been ratified. Some incidents in regard to the exequaturs of consuls and matters of extradition came up which emphasized the desirability of such a convention, and Jay was called upon to make a report on the Franklin-Vergennes convention, preparatory to action by Congress on its ratification.

It is no particular reflection on our ally that in 1782, when the United States was one of the smaller, if not the smallest, power in the world, that the Minister for Foreign Affairs of France should look upon our Government with the same kind of patronage which he showed to other protégés of the mighty French monarchy, like

Poland and Turkey. The very generosity and benevolence of France in assisting to secure the independence of the new republic must have impressed French statesmen easily with a sense of values such as might exist between patron and client. And it is likely that the attitude of the French ministers in the United States, though always loyal, did occasionally more resemble that of the pro-consul than that of a minister accredited to an equal state. This attitude had expressed itself in the consular convention which Franklin had signed with Vergennes. There may be doubts as to whether Jay's suspicions of Vergennes's loyalty in 1782 can be justified, but there certainly can be no doubt but that this consular convention granted too intimate privileges to consuls to be compatible with our sovereignty. The draft convention itself which was sent over by Congress to Franklin went too far in that direction, but the convention as finally signed allowed new interpolations. That it was nominally reciprocal did not alter the fact that it would be one-sided in practice.

Jay placed the original draft scheme and the signed convention in parallel columns, so as to make clear the changes which had been introduced by Vergennes. These are worth our attention in some detail. The original draft of Congress had been entitled as a convention between the King of France and the United States of North America; the signed convention changed this to the "Thirteen United States of North America." The draft had required consuls and vice-consuls to present their commissions in the first instance to the United States in Congress assembled, from which an act of recognition would follow, for delivery to the supreme exec-

utive power of the state in which the consul was to reside; the convention provided that French consuls were bound to present their commissions on arrival *in the respective states*, according to the form which should there be established. This change in title and in the first article shows a well-justified caution on the part of Vergennes in dealing with a federal government which had no power over the commerce of the several states. At the same time, the moral effect of such an article on the already weak Confederation was something which any advocate of a stronger union—and Jay was most emphatically such an advocate—must needs have resisted. The convention omitted a requirement of the draft that all consuls be nationals of the country they represented, and be not engaged in trade. Jay mentioned this without comment. It also omitted the original provision for a chapel in which the consul might worship according to his own religion. Jay maintained that because the Catholic religion might be freely professed and exercised in the United States, while the Protestant religion had no legal toleration in France, the omission of this was a departure from the line of reciprocity.

The original scheme, which Jay had by no means warmly favoured, had provided that in both civil and criminal cases between nationals residing in the territory of the other party the consul of those nationals was to exercise jurisdiction; whereas, in cases between a French subject and an American citizen the domestic tribunals were to have cognizance. The convention interfered with this principle by placing all crimes under the jurisdiction of the domestic tribunals, and thus broke down a part of this extraterritorial jurisdiction;

but it inserted a provision providing that in cases of damage suits between French subjects and American citizens, arising out of cargoes of goods, that declarations and statements filed before consuls might be admitted as evidence. Jay did not complain about withdrawing all criminal cases from consular jurisdiction—in fact, he resented all suggestion of extraterritorial justice—but he showed that admission into domestic tribunals of consular declarations opened the way for the presentation of a mass of *ex parte* evidence. Another introduction into the signed convention was the right of a consul not only to arrest and to sequester ships of subjects of his nation (as had been allowed by the draft) but also to send them back, and to do the same with captains, masters, sailors or *passengers*. At the same time the consul was to keep a register of all the nationals of his government residing in the territory to which he was accredited and certificates from the consul were to serve as *inalienable* proofs of citizenship. These provisions enabled one party to the convention, France, to exercise an effective restraint on emigration and to prevent the nationalization of any of its subjects within the domains of the other party, the United States. The convention also had added a provision giving full and entire immunity for the persons, houses and papers of consuls, without making them specifically amenable to the laws of the land.

Another interpolation into the convention provided that consuls might appoint “agents,” with consular privileges and immunities, to serve in distant parts of the country. The foreign consul had thus an effective means of surveillance over the whole land, and an abuse of this

privilege might be a serious infringement on the sovereignty of the nation in which such surveillance was exercised. The reports of British and Spanish consuls in the United States during this period show that they, at least, considered one of the most important duties of their office to be the exercise of a political surveillance rather than the assistance of purely commercial business. Jay's caution on this point was justifiable and very properly vigilant.

Having demonstrated wherein the signed convention had departed from the draft scheme prepared by Congress, the Secretary recalled to Congress that in its sovereign capacity it had a right to refuse to ratify the treaty if the instructions to its plenipotentiary had been exceeded. He contended that the nominally reciprocal features of the treaty did not make it actually so. The United States had no necessity nor desire to prevent its people from migrating, but on the contrary had every reason to encourage immigration; therefore restrictions against migration were harmful to the United States, though perhaps useful to France. We had no need for a corps of agents in France, while the existence of such a corps in this country of consular "agents," for the dissemination of political propaganda and the surveillance of the country, capable of efficient action under secret orders from a foreign country, set up on American soil a piece of foreign political machinery which might well be avoided. Jay also objected to the lack of complete reciprocity by not allowing American consuls in any but French European ports.

Jay made an impregnable strong case against ratification, but was tender enough of French susceptibilities

not to recommend an abrupt rejection of the documents. "Although the true policy of America," he reported, "does not require, but, on the contrary, militates against such conventions; and although your Secretary is of opinion that the convention, as it now stands, ought not to be ratified, yet as Congress have proceeded so far in the present instance, he thinks that instructions should be sent to their Minister at Versailles, to state their objections to the present form, and to assure the King of the readiness of Congress to ratify a convention made agreeable to the scheme before mentioned, provided an article be added to limit its duration to eight or ten years, in order that practice and experience may enable them to judge more accurately of its merits than can ever be done on mere theoretical establishments, however apparently expedient."

Vergennes grumbled a little at this and averred that the provisions of the convention all being reciprocal, there could be little objection on the part of Congress, since the consuls of the United States could do in France what French consuls did in the United States; but he gracefully resumed the negotiation, and, thanks to the presence at Paris of such a sympathetic minister as Jefferson, another convention was signed by him and Vergennes's successor, Montmorin, in 1788. This convention omitted the obnoxious features controlling emigration and nationality, allowed consular agents for restricted mercantile operations, without enjoyment of consular immunities; used the term "United States of America," and provided for delivery of commissions to and reception of exequaturs from the federal government, instead of the states; gave most-favoured-nation consular privi-

leges and immunities to the respective parties; and, while giving full immunity to consuls and their chancellors and secretaries, together with their chanceries and papers, exempting them from the ordinary personal and military services, it made them in all other instances subject to the laws of the land like natives. It retained the extraterritorial feature which gave consular jurisdiction in civil cases arising between the nationals of the consul residing in his jurisdiction.

Jay did not wholly favour even this, and neither would the reader today, but he felt that it was sufficiently in accord with previous instructions and commitments of Congress to justify its ratification. The Secretary begged leave to report: "That in his opinion, there exist in the convention of 1788 no variations from the original scheme sent to Dr. Franklin, in 1782, nor from the convention of 1784, but such as render it less ineligible than either of the other two. That, although he apprehends that this convention will prove more inconvenient than beneficial to the United States, yet he thinks that the circumstances under which it was formed render its being ratified by them indispensable." This report was made by Jay, not to Congress, but to the Senate which had been installed under the new Constitution, before the appointment of the first Secretary of State. The Convention of 1788, ratified unanimously by that body in July, 1789, was the first treaty or convention ever to receive the formal sanction of the United States Senate. The convention, along with the other French treaties of 1778 with the United States, was abrogated in 1798 by act of Congress, during the "great schism." The treaty of 1800 with France provided

merely for the presence in each country of "commercial agents" of the one party in such ports and places as desired by the other party, upon the most-favoured-nation privileges. Thus ended the threat of extraterritoriality to American jurisprudence. John Jay's most important diplomatic service to his country was the advice he rendered to Congress on the Franklin-Vergennes consular convention of 1784.

Another question which arose between the two allies was that of the financial debt of 35,000,000 livres²⁰ which France had loaned to the United States during the Revolution, ten million of this being a loan from Dutch bankers underwritten and guaranteed by France. The feeble financial power of the Confederation made it impossible to do more than meet a few interest payments on the Dutch loan. When instalments of principal and arrears of interest began to fall due in 1785, Congress was able to raise no money, and bankruptcy ensued. The French Government insisted that at least the interest on the Dutch loan should be met promptly, and let Jay and Congress understand that the rest of the debt remained alive, but was not very insistent about it. Indeed, as Professor Aulard has shown, France pressed very little for payment of the debt, and there seemed to be a general assumption in 1789 that there was little chance of ever collecting it. Certainly no efforts were made to do so. The payment of the debt, which is described in the next volume, began upon the initiative of the United States. If Congress was unable to collect money to pay this or other debts, there was no thought of regarding it other than an honest debt entitled to prompt payment. De Moustier, French minister at New

York, wrote home in 1789, "One may affirm that the state of opinion in the United States is such as to favour the King's credit, and that this is regarded as sacred by nearly every inhabitant of these states."

John Jay had no patience for compromise on this point. He regarded the debt to France as sacredly as anyone else, and he constantly urged that provision be made for its payment. He likewise condemned the attempts of a few states to pass laws discriminating against foreign owners of bonds by withholding interest. "Every principle and consideration of honor, justice, and interest calls upon us for good faith and punctuality," wrote Jay to Jefferson in 1786, anent the unpaid instalments then due, "and yet we are unhappily so circumstanced, that the moneys necessary for the purpose are not provided, nor in such a way of being provided as they ought to be. This is owing, not to anything wrong in Congress, but to their not possessing the power of coercion without which no government can possibly attain the most salutary and constitutional objects. Excuses and palliations, and applications for more time, make bad remittances, and will afford no inducements to our allies or others to afford us similar aids on future occasions."

As Jay stated, the trouble was not with lack of good will or sense of financial responsibility, but with the paralysis of government under the Articles of Confederation. The limitations and handicaps under which he worked, in this respect and in many others, as Secretary for Foreign Affairs, made him one of the most vigorous, as indeed he was one of the most influential champions of a government stronger and better able to meet the

exigencies of the union. During his term of office this vital concern was uppermost in his mind, as it was in that of nearly every other American who had had to deal with foreign affairs.

One would think that France, having so great a financial interest at stake, would have been the first to wish to see more power given to the arm of Congress. This was not the case. Despite the fact that a weak confederation of the United States made collection of the debt seem less likely as each successive year went by, the French Foreign Ministers—both the Comte de Vergennes and his successor, the Comte de Montmorin—preferred to see the United States remain a weak and divided republic. As such, it would be more dependent upon the protection of France, less inclined or able to embark upon an adventurous or disconcerting foreign policy. The inconvenience arising to foreign envoys in America from what Vergennes called “the ambulatory character of Congress,” in its perigrinations from town to town, annoyed the French Foreign Minister, but he was not appalled by any approaching collapse of the Confederation. “It appears, Sir,” he wrote to the chargé, Marbois, in 1784, “that the American Confederation has a great tendency toward dissolution. If this dissolution takes place, we shall soon see the Americans delivered up to intestine dissension and to troubles, of which it will be difficult to foresee the consequences. It is hoped that in this regard we have no obligations to fulfil nor interest to care for.”²¹ Montmorin, though equally careful with Vergennes not to interfere in American domestic concerns, instructed de Moustier, in regard to the movement for the new Constitution: “That object interests

the King's policy only feebly. His Majesty thinks, on the one hand that the deliberations will have little chance of success because of the diversity of affections, interests and principles in the different provinces, on the other hand that it suits France to have the United States remain in their present state, because if they should assume the consistence of which they are susceptible they would soon acquire a force and power which they would probably be very eager to abuse. Despite this last reflexion, the King's Minister will take care to preserve a passive conduct, not to show himself either in favour or against the new arrangements now on foot, and, when importuned, he is to mention only the good wishes of the King and his own personal ones for the prosperity of the United States."²²

As to the alliance, the correspondence of the French ministers in the United States during the period of the Confederation shows that although it was the policy of France to keep it alive, and never to admit that it had gone out of effect, as a means of preventing the colonies from gravitating back into English influence, there was entertained at Versailles little or no hope that it would ever be of any military use in case of a war with Great Britain. It occurred to Jay, in January, 1786, that there might be some hope of calling on the article of mutual guaranty of territory to secure the assistance of France for the eviction of British troops from the occupied posts. "Does France consider herself bound by her guarantee to insist on the surrender of our posts?" he wrote to Jefferson. "Will she second our remonstrances to Great Britain on that head? I have no orders to ask these questions, but I think them important."²³

Jefferson sounded out Vergennes, most circumspectly, on this. After commenting on the injustice of the British procedure in violation of the treaty, in which Vergennes cordially concurred, Jefferson observed according to his own report, as follows:

“I told him I was uninformed what Congress proposed to do on this subject; but that we should certainly always count on the good offices of France, and I was sure that the offer of them would suffice to induce Great Britain to do us justice. He said that surely we might always count on the friendship of France. I added, that by the treaty of alliance, she was bound to guaranty [*sic*] our limits to us, as they should be established at the moment of peace. He said they were so, *mais qu’il nous étoit nécessaire de les constater*. I told him there was no question what our boundaries were; that the English themselves admitted they were clear beyond all question.

“I feared, however, to press this any further, lest a reciprocal question should be put to me, and therefore, diverted the conversation to another object.”²⁴

Jefferson apparently preferred to allow the mutual obligation of territorial guaranty to evaporate. So must Jay have felt, for the subject was dropped. It will be useful to remember this when in our study of Jefferson as Secretary of State we come to the question of American neutrality.

Another object of Jay’s diplomacy with France was to induce that nation to extend to American ships and goods certain commercial favours in her West Indian islands, thus breaking into the hitherto prevailing sys-

tem of colonial monopoly that had been practised by all European powers and which was so vexatious at the time in the case of Great Britain. Such privileges were granted to the United States in a very considerable degree, without much solicitation. Vergennes himself believed that advantages ought to be accorded to the United States in the French islands, or Americans would engage in an illicit commerce there, but that under no consideration ought the interests of French national commerce and navigation to be sacrificed for the purpose of pleasing the United States. He felt that the great necessity of those colonies for American flour would justify its importation.²⁵

A decree of August 30, 1784, established in the several French West India islands seven free ports to which foreign ships under sixty tons burden might bring lumber, provisions, peltries, raw furs, resin and tar, upon payment of small tariffs, and might be allowed to carry away for foreign ports molasses and rum, and French merchandise. A preferential tariff was granted to similar goods imported in French bottoms. This opened up the islands to the chief American articles of trade, except salt pork, and formed the basis of a prosperous traffic which lasted until the next French war with England, in 1793. To the United States it was an offset commercially to the exclusion of American ships from the British islands. To France it was of political advantage in enabling it to contrast the treatment which the United States received respectively in French and British West India colonies.²⁶ On the other hand, decrees establishing certain preferential tariffs in France for importations of whale oils and tobacco in French as against foreign bot-

toms interfered with those American exports to France, and gave some concern to Jay and Jefferson. Through their efforts certain diminutions of tariffs were secured on American whale oils.

More difficult to cope with was the tobacco monopoly of the Farmers-General. To this company the French monarchy farmed out the tobacco revenue of the kingdom, giving a complete monopoly on the sale of tobacco in France in return for an annual fixed sum. The Farmers-General proceeded to make a contract with Robert Morris of Philadelphia in 1785 to furnish all its tobacco, at a figure about one-half the prevailing price. This contract ruined the French market for American tobacco, lowered the purchasing power of the United States for French goods, and has been shown recently to have been a most influential factor in preventing France from winning its share of American commerce after 1783. It drove the rich *entrepôt* trade in American tobacco, which France might easily have had to the great advantage of Franco-American commerce, straight into English hands. Jefferson actually suggested to Vergennes and his successor that it would be well to abolish the Farmers-General monopoly, but the hold which that institution had on the insecure finances of France was too tight to be broken by the suggestions of any foreign representative, albeit Vergennes and others endeavoured to abolish it. It lived on to fall with the collapse of the ancient régime itself.²⁷

II

Nothing is a more striking commentary on the ineptitude of the American Government at this time than the

unrebuked enslavement of our mariners by the Barbary States. One of the advantages of imperial connection of the American colonies had been protection by the British navy and by British diplomacy for their ships engaged in a thriving Mediterranean trade. Before the Revolution these corsair states and their unblushing piratical operations were an advantage to British, including American commerce, for they made the Mediterranean so dangerous for ships not enjoying the protection of the British Empire that comparatively few other traders ventured into that Sea, or if they did, high insurance rates hampered their business. In 1783, Benjamin Franklin wrote to Robert R. Livingston, then Secretary of Foreign Affairs: "I have in London heard it is a maxim among the merchants, that if *there were no Algiers, it would be worth England's while to build one.*" British protection, of course, ceased with American independence, and Lord Sheffield exulted in the thought that American ships and mariners would now fall easy prey to the corsairs, who would keep them out of the Mediterranean and leave their share to English interests and ships.

"It is not probable," he said, "the American States will have a very free trade in the Mediterranean; it will not be the interest of any of the great maritime powers to protect them there from the Barbary States. If they know their interests, they will not encourage the Americans to be carriers—that the Barbary States are advantageous to the maritime powers is obvious. If they were suppressed, the little states of Italy, etc. would have much more of the carrying trade. The French never shewed themselves worse politicians than in en-

couraging the late armed neutrality. . . . The armed neutrality would be as hurtful to the great maritime powers as the Barbary States are useful. The Americans cannot protect themselves from the latter; they cannot pretend to a navy."

This predicament in the Mediterranean had been foreseen by American statesmen since the beginning of the Revolution. A substitute for British protection had been sought in France during the negotiation of the alliance of 1778, but the most that Vergennes would agree to was a promise to use the King's good offices between the United States and these north-African potentates.

As soon as American shipping ventured forth on the oceans after the war, Congress had to take up the question of treating with the Barbary States. Commissions were issued to the three treaty plenipotentiaries at Paris, empowering them or their agents to treat for peace with Morocco, Algiers, Tunis and Tripoli. Before the American commissioners were able to conclude the several negotiations already under way in Paris for treaties of commerce with European nations, the Sultan of Morocco had made informal and irresponsible overtures to Dr. Franklin for a treaty with the United States. Franklin naturally hesitated to commit himself to informal negotiations with a ruler who had applied in an uncertain and indefinite way to him through an unaccredited adventurer; but the Sultan emphasized his position by capturing the brig *Betsy* in October, 1784, and throwing her crew into slavery. Meanwhile, on the 12th of May, Congress had appropriated \$80,000 to be placed at the disposition of the commissioners for negotiation with the Barbary States. The commissioners at Paris

granted plenary powers to an agent, Thomas Barclay, who, in 1786 and 1787, with surprising ease and at the low cost of \$30,000 in presents, and no tribute, negotiated a satisfactory treaty with Morocco, after a truce had been accorded which had resulted in the release of the captives.

The facility with which this treaty was concluded was largely due to the mediation of the King of Spain, undertaken for political reasons. That monarch had hoped by thus showing the Americans the vital importance of his friendship in the Mediterranean to induce them to accept a treaty which would have closed up the Mississippi River. Our relations with Morocco ever since the time of the treaty of 1787 (with the exception of one or two minor irritating incidents) have been on a satisfactory footing.

Algiers, Tunis and Tripoli proved less amenable. After the close of a war between Spain and Algiers, several American ships were captured. By 1788 twenty-one citizens of the United States were suffering slavery in the pestilential waters of those pirate ports, principally Algiers. Jefferson and Adams, ministers respectively to Paris and London, did the best they could to secure the release of their countrymen, but they could not back up their demands by force, for their Government had no navy; and they could not ransom their compatriots from slavery, because Congress could not raise money enough.

Secretary Jay agreed with Adams and Jefferson that the best way to deal with such gentry was at the cannon's mouth; but Congress being unable to get a navy the next best way was to try to buy a treaty. To provide the money for this a loan had been suggested, and Congress

called on Jay to report on the expediency and possibility of raising money in this way. He reported that even the interest on foreign loans was no longer being paid, and that it was hopeless to attempt to borrow more. He suggested that the states should be apprized of the amount needed to ransom their citizens, and thus it might be possible to get money, at least from such states as were directly interested in doing something about their enslaved citizens. One blushes to record that no money was to be had in this way. So low had responsible government sunk that even the enslavement of citizens elicited no effective response.

Jay's whole attitude toward the Barbary States appears at first consideration rather apathetic. The real explanation is that despairing of being able to release the captives either by force or purchase, he hoped to use this horrible and gruesome example of the necessity of a stronger government as one means of hastening the political reform so needed in the Confederation. Writing to the President of Congress in 1785 anent the reported declaration of war against the United States by Algiers, he said: "This war does not strike me as a great evil. The more we are ill-treated abroad the more we shall unite and consolidate at home." Again, in a report to Congress on a joint letter from Adams and Jefferson describing the Algerian situation, and their suggestion that a loan might be made in Holland for the ransom of enslaved Americans, Jay argued against it. He advocated that a statement of the matter be transmitted to the states and that they be informed of the sum of money necessary to purchase such treaties, "and that until such time as they furnish Congress with their re-

spective portions of that sum, the depredations of those barbarians will, in all probability, continue and increase."²⁸ On December 14, 1786, he wrote a letter to Thomas Jefferson, in which he said:

"The situation of our captive countrymen at Algiers is much to be lamented, and the more so as their deliverance is difficult to effect. Congress cannot command money for that, nor indeed for other very important purposes; their requisitions produce little, and government (if it may be called a government) so inadequate to its objects, that essential alterations or essential evils must take place. . . .

"If Congress had money to purchase peace of Algiers, or to redeem the captives there, it certainly would, according to their present ideas, be well to lose no time in doing both; neither pains nor expense, if within any tolerable limits, should be spared to ransom our fellow citizens. But the truth is, that no money is to be expected at present from hence; nor do I think it would be right to make new loans until we have at least some prospect of paying the interest due on former ones."²⁹

During his later years in Paris, Jefferson, with the approbation of Congress, made some effort through the Mathurin Fathers, or the Order of the Holy Trinity and Redemption of Captives, to ransom American slaves. He did not have enough money at his disposal to bid for them in the open market, and even the negotiations through the Mathurins had to be conducted with the utmost secrecy—letting it be given out publicly that the

United States had no interest whatsoever in the fate of its captured citizens. It seemed necessary to do this in order to throw the Bey of Algiers off the trail, for, should he discover that the United States panted to secure the release of its citizens, that potentate could be relied on immediately to raise the ransom price; whereas, if he felt that only the piety of the Mathurins was moved by the fate of the men, he would let them go more cheaply, well knowing the slender resources of the treasurer of that most Christian order.

Under these circumstances, Jay's policy, cold-blooded as it seems, appears to have been advisable. Only when a federal government strong enough to command the respect of foreign nations could be created, would there be any hope of stopping the outrageous operations of these barbarous pirate princes.

CHAPTER V

ORGANIZATION OF THE NEW GOVERNMENT AND DEPARTMENT OF STATE

THE great difficulty which Jay encountered in the administration of his office was, as has been realized from the foregoing account of his diplomacy, the lack of a central executive supervising power. This all but fatal defect in the government of the Union was destined to be of short duration, for in the Constitution adopted in 1788, during Jay's tenure of office, it, as well as others, was remedied.

Jay's influence, indeed, was one of the strongest in getting in motion that train of circumstances by which the business men and personal property holders succeeded in bringing to a successful end the agitation for a government more adequate to the exigencies of the Union, and for the protection of property and the American system of representative government.

Jay was proposed as a delegate of New York to the Federal Convention at Philadelphia in 1787. His well-known tendency towards centralization prevented his choice.³⁰ After the framing of the Constitution, he co-operated with Hamilton and Madison in writing *The Federalist*, which still remains the classic interpretation of the Constitution. He was a delegate to the New York ratifying convention, and is said to have been second only to Hamilton in securing the adoption of the Federal Constitution by his state.

It would be improper in this place to enlarge upon Jay's views of the reforms which should be made in the government, inasmuch as he was not a member of the Federal Convention, but it is permissible to show by a quotation or two from his letters to General Washington and to Thomas Jefferson, that the views which he advocated found favour with the delegates to the Convention in which he, doubtless, would have had influence had he been there.

"I have long thought," he wrote to Jefferson, August 18, 1786, "and become daily more convinced, that the constitution of our federal government is fundamentally wrong. To vest legislative, judicial and executive powers in one and the same body of men, and that, too, in a body daily changing its members, can never be wise. In my opinion, these three great departments of sovereignty should be forever separated, and so distributed as to serve as checks on each other. But these are subjects that have long been familiar to you, and on which you are too well informed not to anticipate everything that I might say on them.

"I have advised Congress to renew your commission as to certain powers. Our treasury is ill supplied—some States paying nothing, others very little; the impost not yet established; the people generally uneasy in a certain degree, but without seeming to discern the true cause, viz., *want of energy both in State and Federal governments*. It takes time to make sovereigns of subjects."

In a letter to General Washington, under date of January 7, 1787, he amplified these views and showed himself one of the most advanced Federalists. After saying, "Let Congress legislate—let others execute—let

others judge," he asks the question, "Shall we have a king? Not in my opinion while other experiments remain untried." As to these experiments, he said: "Might we not have a governor-general limited in his prerogatives and duration? Might not Congress be divided into an upper and lower house—the former appointed for life, the latter annually,—and let the governor-general (to preserve the balance), with the advice of a council, formed for that only purpose, of the great judicial officers, have a negative on their acts? Our government should in some degree be suited to our manners and circumstances, and they, you know, are not strictly democratical."

In No. III of *The Federalist*, he speaks of foreign affairs: "It is of high importance to the peace of America that she observe the laws of nations towards all these Powers, and to me it appears evident that this will be more perfectly and punctually done by one national government than it could be either by thirteen separate States, or by three or four distinct confederacies."

Jay spoke with a peculiar knowledge, based on experience in foreign affairs at home and abroad. The Constitution as adopted fully met the needs of the situation. The President of the United States was to make treaties by and with the advice and consent of the Senate, provided two-thirds of the members present concurred. It was the fear of a minority of the states that a majority might trade off their vital interests in a treaty, like that proposed by Jay on the Mississippi question in 1786, which was responsible for this notable provision in the Constitution. Treaties were declared to be the law of the land and, as such, superior to the provisions of a state constitution or statute. In this way the treaty-making

power was centralized, and uniform interpretation of the obligation incumbent upon the states and their citizens could be obtained in a legal question through the federal courts. Through the Department of State, as organized under the Constitution, foreign affairs were placed under the supervision of the President.

The Constitution did not provide in express terms for Departments, but indirectly, by the provision that the President could call upon the heads of Departments for their opinions. The matter, however, had been discussed in the Federal Convention and it had some precedent in practice under the Articles of Confederation. It was evident, therefore, that there was to be a Department of Foreign Affairs. An act to that effect was passed in the first session of the Congress and received the signature of the President on July 27, 1789. A bill had been introduced in the Congress to create a Home Department. The duties of the proposed office were conferred upon the Department of Foreign Affairs, which was now renamed the Department of State by an act approved September 15, 1789. Under the new, as under the old Government, the Secretary of State was to be the channel of communication between the federal government and the several states. The duties of the Secretary, in so far as they relate to foreign affairs, are prescribed in the first section of the act of July 27, 1789. He is "to perform and execute such duties as shall, from time to time, be enjoined on or intrusted to him by the president of the United States, agreeable to the constitution, relative to correspondence, commissions, or instructions, to or with public ministers or consuls, from the United States, or to negotiations with public ministers from

foreign states or princes, or to memorials or other applications from foreign public ministers, or other foreigners, or to such other matters respecting foreign affairs as the president of the United States shall assign to the said department; And furthermore, that the said principal officer shall conduct the business of the said department in such manner as the president of the United States shall, from time to time, order or instruct.”³¹

It is to be observed that the President of the United States is by this statute vested with the conduct of the foreign affairs of the government; that the Secretary of State, an officer appointed by him and confirmed by the Senate, is subordinated to his authority and is to carry out the policies either formulated by the President or by the Secretary of State with his approval. It will also be observed that the President is left a free hand in the matter, although any treaty which shall be negotiated is not to become binding until it is concurred in by the approval of the Senate by a two-thirds majority of those senators present, and then only if the President, after approval, shall care to exchange ratifications with the foreign country.

The President by the Constitution was given power to nominate ambassadors and other public ministers and consuls, subject to confirmation by the Senate. In this way the entire foreign service of the United States rests in his discretion, to such a degree that the President himself transmits to Congress the annual message on foreign affairs, which may be prepared in whole or in part by the Secretary of State, though the annual reports of other members of the Cabinet are prepared and transmitted by them individually to the Congress.

A further observation is to be made. The President is authorized "by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." It was apparently supposed that the President should take the advice of the Senate in advance of the negotiation, and that the treaty or convention as negotiated should be submitted to the Senate for its consent. In the early days of the Republic the President did, indeed, request the advice of the Senate, but within thirty years after the organization of the government the practice had commenced of the President first negotiating independently and then submitting a finished treaty to the Senate for its advice and consent at one and the same time. The Senate on such occasions exercises its advice by amending the terms of the treaty and then consenting to it as amended, a process which has often been productive of misunderstanding with foreign nations.

The President often confers on foreign affairs with representative members of Congress and other individuals. The Secretary of State frequently confers, as does sometimes the President, with the committee of foreign affairs of the Senate in advance of negotiations, and it is highly desirable that he should do so before entering upon negotiations; because under the committee system of American congressional procedure, the assent of the committee is generally tantamount to a ratification by the Senate of the treaty when negotiated along the general lines agreed upon between the Secretary of State and the committee of foreign affairs. In any event, the Senate has the last word—except for the final exchange of ratifications—and no treaty, convention or agreement

with a foreign power has the force and effect of law until the document has the concurrence of two-thirds of the Senators present. Therefore, in so far as the Department of State is concerned, the views of Secretary Jay have prevailed. Foreign affairs are centralized; they are placed in the control of the President, with the Senate of the United States as a check upon the exercise of the treaty-making power. In the case of treaties ratified by the Senate, which require appropriations of money to carry them with force, the House of Representatives, through its constitutional powers over appropriations has, in effect, a potential check on the Senate, although at no time has it refused to vote appropriations necessary for this purpose.

CHAPTER VI

CONCLUSION

IT would indeed be a captious critic who would deny to John Jay the qualities of an efficient Secretary of State in so far as the despatch of business and the routine of his Department were concerned. As a young man, he is said to have had a lucrative practice at the bar, and for a decade he had had not only experience with affairs, but with large affairs, and he was preeminently a man of affairs.

But this concerns the mechanics of his office; as regards the policy to be pursued, there may well be a difference of opinion, although none which could reflect upon his honour as a gentleman and his devotion to the interests of his country as he saw them. He was not over-communicative, which is often a virtue in diplomatic discussion, but in his relation with the Congress and his American associates, he was inclined to be reserved and to decide for himself the nature and extent of the information with which they were to be furnished. He left the impression of not being frank and open, although his honesty is neither impugned nor questioned.

The suspicions with which he regarded the French Court during the peace negotiations with Great Britain do not appear to be justified, and it is likely that they injured the American negotiations so well in hand by Franklin at Jay's arrival. His conduct of the British negotiations in 1786 does not reveal a high degree of perspi-

cacity, though it reflects the acumen of a man of integrity. His negotiations with the Spanish representative in the United States in 1785-87 show Jay persuaded by Gardoqui to reverse the stand on the Mississippi question, which he had so resolutely taken when in Spain in 1781. In 1786 he was willing to, and actually did, enter into an agreement with the Spanish representative for renouncing, for a period of years, the navigation of the Mississippi—an action repudiated by all the southern states and which he himself practically admitted to the Congress in 1788 to have been a mistake. Surely one of the qualities of a successful Secretary of State is that he understands the aims and motives of those with whom he negotiates, and that he appraises rightly the opinion of his fellow countrymen. Jay's own handling of our relations with France, suspicious as he was of that nation, shows ability on his part; his report on the proposed consular convention of 1784, and the consequent modification of that convention, was a lasting service to his country. It was also well that Congress had as its Secretary during those critical years of domestic politics a man who realized the deficiencies of the Articles of Confederation and who used his very considerable influence towards the achievement of a new government which would make the United States potent at home and respectable abroad. Though a reappraisal of Jay's diplomacy before his term as Secretary for Foreign Affairs, during it, and after it, does not increase his reputation as a diplomatist, he was certainly the best man in America at that time for the place, and there is no doubt that his administration brought dignity and prestige, if not any striking diplomatic success, to the office.

If we mention Jay's limitations as a diplomatist, we must remember that while Secretary for Foreign Affairs he was hampered at every turn by the limitations of the government of the Confederation.

Upon assuming the Presidency, George Washington offered Jay his choice of positions under the new Government. Jay acted as Secretary of State until the return from France of Thomas Jefferson, who had been appointed Secretary of State. Jefferson assumed the duties of his office, March 22, 1790. In the interval Jay had been appointed to, and had accepted, the Chief Justiceship of the United States, and his connection with the Department of State was more nominal than real.

It is not to be overlooked at this point that Jay suggested to President Washington that he transmit to the Senate the report which Jay had prepared, April 21, 1785, and presented to the Congress of that year. It was in favour of the settlement of the boundary question with Great Britain by means of a mixed commission. The President, in transmitting it to the Senate, February 9, 1790, emphasized the policy which Jay had advocated in the matter of boundaries so as to extend peaceful settlement to all disputes, not merely with Great Britain, but with all nations; and as previously intimated, Jay himself was to be permitted to carry into effect the two recommendations which he had ineffectively made to the Congress under the Confederation and to the first session of the Senate under the Constitution.

Jay's service as Chief Justice (1789-1796) was during a period when few cases came before that tribunal. His tenure of this office is noteworthy for two things: the

decision in the case of *Chisholm v. Georgia* (1792) and his diplomatic mission, while still Chief Justice, as envoy extraordinary and minister plenipotentiary to Great Britain. Under the Constitution the federal judicial power was vested in one Supreme Court and such inferior courts as Congress should establish, which included, among other jurisdictions, all cases "between a State and Citizens of another State" (Art. III, Sec. 1). The executors of one Chisholm, a citizen of a state other than Georgia, sued that state to collect moneys due by contract for supplies furnished during the Revolution. Georgia refused to appear before the Supreme Court of the United States, and Jay, giving the opinion of the Court which was divided on the decision, decided the case against Georgia by default. Jay took occasion to lay down express wording of the Constitution to assert that "suability and State sovereignty are not incompatible," that a state could be a defendant party as well as a plaintiff party to a suit, in a case involving a citizen of another state. The logic of Jay's decision was unassailable except through an amendment to the Constitution. So strong was the lingering state sovereignty at that time that before a question of execution against contumacious Georgia could arise, the eleventh amendment to the Constitution was ratified, establishing the sovereign irresponsibility of a state towards citizens of another state, or of foreign states.

The treaty of 1794 with Great Britain which bears his name was Jay's in the sense that he signed it. The political preliminaries of Jay's Treaty were conducted in Philadelphia largely by Hamilton in conference with George Hammond, then British minister to the United

States, so it would seem that the treaty which bears Jay's name should be credited to Alexander Hamilton, excepting, however, Articles V, VI and VII, dealing with the arbitration of outstanding difficulties between the two countries. Here Jay, profiting by his earlier experience on the royal boundary commission, was able to suggest a technique of dealing with the settlement of details which it had already been decided to settle by diplomacy; and from Jay's mixed-commission articles in the treaty of 1794, the first American precedent for arbitration occurred, a precedent which has been so fruitful in the subsequent international relations of the United States. This is a title of no mean renown for the man who signed that treaty for the United States.

The interesting chapter in the diplomatic history of the United States connected with the negotiation of this treaty can not be detailed here.³² It will be mentioned in a subsequent volume of this series. No one who has studied carefully the sources of that negotiation can be convinced that it was, on the whole, an able piece of diplomacy on Jay's part.

Before the terms of the treaty had been disclosed, and also before his arrival in America, in 1795, Jay had been nominated by the Federalists for governor of New York. He was duly elected, and resigned his Chief Justiceship in order to accept this post. He was re-elected in 1798 for another three year term, at the end of which he carried out his decision to retire to private life. To do this it was not only necessary for him to decline renomination by the Federalists for the governorship—he scarcely would have won the election in 1800—but to refuse a second nomination, unsolicited by Jay, by the

President, as Chief Justice of the United States, which had been confirmed by the Senate. He refused to take again the post of Chief Justice, which in 1789 he had considered so important a position, because he had become convinced that it was under the existing system so defective that it could not obtain the energy, weight and dignity essential in affording due support to the national government. A stronger mind and a stronger personality than Jay's, during the next third of a century, was to prove, presiding over that tribunal, the hastiness of Jay's conclusions on this point. His refusal to accept the Chief Justiceship was followed by the appointment of John Marshall.

An incident in Jay's governorship of New York which reflects the pure quality of his character should be recorded by everyone who writes or speaks of his career. In the spring of 1800 the elections to the New York legislature had been carried by the Republicans. It was evident that the legislature which was to assemble in the fall would place Republican electors in the electoral college and cast the vote of New York for that party. Believing that the presidential election of 1800 hinged certainly on the vote of New York, Alexander Hamilton and lesser Federalist leaders importuned Jay to call a special session of the expiring Federalist legislature before the new Republican legislature should assemble and to amend the Constitution of the state of New York so as to have the presidential electors chosen by the people in districts arranged so as to insure a Federalist victory. Hamilton argued that in such a crisis one's conscience need not be too tender; that any end justified the means. Jay, stalwart Federalist that he

was, would not stoop to this contemptible political trickery. On Hamilton's letter proposing the plan, he wrote the endorsement: "Proposing a measure for party purposes which I think it would not become me to adopt." There the matter lay, till his biographers uncovered his private papers. Certainly no American public servant ever terminated a long career in office more honourably than this. It has been cited to thousands of school and college students by history teachers in the United States as a classic example of civic rectitude and political honesty. Let us hope that it will continue to be cited for hundreds of years. Men who leave examples like this have done well for their country.

Jay's life in retirement was politically uneventful and singularly placid and happy in his private life. In his old age he took an even more active interest in religious and philanthropic affairs. He died suddenly, May 17, 1829, in his eighty-fourth year, leaving behind him the reputation of long and honestly administered public service and a spotless character.

APPENDICES

APPENDIX

TO HISTORICAL INTRODUCTION

TEXTS OF FRANCO-AMERICAN AND FRANCO-SPANISH ALLIANCES

1. TREATY OF ALLIANCE BETWEEN FRANCE AND THE UNITED STATES

CONCLUDED FEBRUARY 6, 1778; RATIFIED BY THE
CONTINENTAL CONGRESS MAY 4, 1778; RATIFI-
CATIONS EXCHANGED AT PARIS JULY 17, 1778

(From original copy in State Department Archives)

The Most Christian King and the United States of North America, to wit New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, having this day concluded a treaty of Amity and Commerce for the reciprocal advantage of their subjects and citizens have thought it necessary to take into consideration the means of strengthening those engagements, and of rendering them useful to the safety and tranquillity of the two parties, particularly in case Great Brittain in Resentment of that connection & of the good Correspondence, which is the object of the said Treaty should break the Peace with France either by direct hostilities or by hindering her commerce and navigation, in a manner contrary to the Rights of Nations, and the Peace subsisting between the Two Crowns; and his Majesty and the said United States having resolved in that case to join their Councils and Efforts against the Enterprises of their Common Enemy, the respective Plenipotentiaries impowered to concert the clauses and conditions

proper to fulfill the said Intentions have after the most mature deliberations, concluded and determined on the following articles.

ART. 1

If war should break out between France and great Britain, during the continuance of the present war between the United States & England his Majesty and said United States shall make it a common cause and aid each other mutually with their good offices, their Counsils and their forces according to the exigence of conjunctures as becomes good and faithful allies.

ART. 2

The essential and direct End of the present defensive alliance is to maintain effectually the Liberty, sovereignty and independence absolute and unlimited, of the said United States, as well in matters of Government as of Commerce.

ART. 3

The two contracting Parties shall each on its own part, and in the manner it may judge most proper, make all the efforts in its power against their common Enemy, in order to attain the end proposed.

ART. 4

The contracting Parties agree that in case either of them should form any particular Enterprise in which the concurrence of the other may be desired, the party whose concurrence is desired shall readily and with good Faith join to act in concert for that purpose as far as circumstances of its own particular situation will permit; and in that case they shall regulate by a particular convention the quantity and kind of succour to be furnished and the Time and manner of its being brought into action as well as the advantages which are to be its compensation.

ART. 5

If the United States should think fit to attempt the reduction of the British Power remaining in the northern parts of America, or the Islands of Bermuda, those countries or Islands, in case of success, shall be confederated with, or dependent upon the said United States.

ART. 6

The Most Christian King renounces forever the possession of the Islands of Bermuda, as well as of any part of the Continent of North America which before the Treaty of Paris 1763, or in virtue of that treaty were acknowledged to belong to the Crown of Great Brittain or to the United States heretofore called British Colonies or which are at this Time, or have lately been under the Power of the king and Crown of Great Brittain.

ART. 7

If His Most Christian Majesty shall think proper to attack any of the Islands situated in the Gulph of Mexico, or near that Gulph which are at present under the power of Great Brittain all the said Isles, in case of success shall appertain to the crown of France.

ART. 8

Neither of the Two parties shall conclude either Truce or peace with Great Brittain, without the formal consent of the other first obtained; and they mutually engage not to lay down their arms untill the Independence of the United States shall have been formally or tacitly assured by the Treaty or Treaties that shall Terminate the war.

ART. 9

The contracting parties declare that being resolved to fulfill each on its own Part the clauses & Conditions of the

present Treaty of Alliance according to its own power, & circumstances, there shall be no after claim of compensation on one side or the other what ever may be the event of the war.

ART. 10

The Most Christian King and the United States agree to invite or admit other Powers who may have received injuries from England to make common cause with them and to accede to the present Alliance under such conditions as shall be freely agreed to and settled between all the Parties.

ART. 11

The two parties guarantee mutually from the present Time & forever against all other powers, to wit. The United States to His Most Christian Majesty the present possessions of the Crown of France in America as well as those which it may acquire by the future Treaty of Peace and his most christian Majesty guarantees on his part to the United States, their Liberty, Sovereignty and Independence absolute and unlimited, as well in matters of government as commerce, & also their Possessions, & the additions or conquests that their confederation may obtain during the war, from any of the Dominions now or heretofore possessed by Great Britain in North America, conformable to the 5th and 6th articles above written, the whole as their Possessions shall be fixed and assured to the said states at the moment of the cessation of their present War with England.

ART. 12

In order to fix more precisely the sense and application of the preceding article, the contracting parties declare that in case of a rupture between France and England the reciprocal guarantee declared in the said article shall have its full force and effect the moment such War shall break out, and if such

rupture shall not take place the mutual obligations of the said Guarantee shall not commence until the moment of the cessation of the present War between United States and England shall have ascertained their possessions.

ART. 13

The present Treaty shall be ratified on both sides and the ratifications shall be exchanged in the space of six months or sooner if possible.

IN FAITH where of the respective Plenipotentiaries to wit: On the part of the Most Christian king Conrad Alexander Gerard Royal Syndic of the City of Strasbourg and Secretary of his Majesty's Council of State and on the part of the United States Benjamin Franklin Deputy to the general Congress from the state of Pennsylvania and President of the convention of the same State, Silas Deane heretofore Deputy from the State of Connecticut Arthur Lee Counsellor at Law, have signed the above articles both in the French and English Languages declaring nevertheless, that the present Treaty was originally composed and concluded in the French language and they have thereunto affixed their seals.

DONE at Paris, this Sixth Day of February one thousand seven hundred and seventy-eight.

C. A. GERARD (L.S.)

B. FRANKLIN (L.S.)

SILAS DEANE (L.S.)

ARTHUR LEE (L.S.)

2. CONVENTION BETWEEN FRANCE AND SPAIN OF ARANJUEZ, APRIL 12, 1779.

(Translated from H. Doniol, *Participation de la France à l'établissement des Etats-Unis d'Amérique* (Paris, 1888), III, 803.)

The Catholic King having employed every means which his love for humanity and for the general tranquillity of nations has suggested to him in order to put a stop to the progress of the troubles which have arisen between France and England, and the peaceful steps taken before the British Ministry not having produced any favorable result up to the present time, His Catholic Majesty finds himself in the position of suspecting, with just reason, that the Court of London is seeking to gain time to continue the aggressions and insults meditated and executed not only against France but also against the dominions of Spain beyond the seas and against its flag, which has already been violated on several occasions without any satisfaction having been as yet obtained, in spite of numerous complaints made to the English Ministry. In these circumstances, in case the latest efforts of the Catholic King to obtain the blessing of peace do not produce better effects, His Majesty sees himself in the regrettable necessity of taking part in the war, in order to forestall and prevent the very serious injuries with which all his cherished subjects of the two worlds find themselves threatened, and also in order to satisfy the friendship and the engagements of that Crown with France, conformably to the treaties subsisting between them. For these purposes, their Catholic and Christian Majesties, in pursuance of and for the complete execution of the said treaties, and especially of Article XVI of the Family Compact, have agreed to act together in operations of war, in case there are any, as well as in the conditions or advantages which the two high contracting parties should seek to acquire or to have fixed by the treaty re-establishing peace. In consequence

thereof, their Catholic and Christian Majesties have given their full powers, to wit: His Catholic Majesty, to Don Joseph Moniño, Count of Floridablanca, Pensioner of the Order of Charles III, of his Council of State, and his First Secretary of State in the Department of Foreign Affairs, and His Very Christian Majesty, to the Comte de Montmorin, his Ambassador Ordinary and Plenipotentiary at this Court of Spain, who, fully instructed as to the intentions of their respective Sovereigns, after having communicated their full powers above mentioned, have agreed upon the following articles:

ARTICLE I

His Catholic Majesty declares that if, in reply to the latest statements and measures of pacification proposed to the Court of London through the channel of the special courier sent on April 3 of this year, that Court does not receive them in such a way that the said pacification is an immediate result, His Majesty will go to war with the King and Crown of England and make common cause with His Very Christian Majesty, publishing his declaration and commencing hostilities at such time and in such manner as shall be determined by said Sovereigns in the plans they are already concerting in order that the operations fail not and may produce their effect.

ARTICLE II

When the case provided in the preceding article arises, there will be taken, when completed, the plan of operations now under discussion and to be settled upon, and according to which the land and the sea forces of the two Crowns can act with mutual advantage, a necessary part of this plan having to be an invasion of the European dominions belonging to Great Britain; and to this end the two high contracting parties will mutually give each other the assistance specified by the said plan.

ARTICLE III

Their Catholic and Very Christian Majesties renew the obligation of Article XVII of the Family Compact, and in consequence thereof promise not to listen to any direct or indirect proposal on the part of the common enemy without communicating it each to the other; and that neither of the two Majesties will sign with the said enemy a treaty, convention or any act of whatsoever nature without the knowledge and previous consent of the other.

ARTICLE IV

The Very Christian King, in exact execution of the engagements which he has contracted with the United States of North America, has proposed and asked that His Catholic Majesty, from the day when he declares war upon England, recognize the sovereign independence of the said States, and that it offer not to lay down arms until that independence is recognized by the King of Great Britain, as this point will have to be the essential basis of all peace negotiations that may be brought about in the future. The Catholic King has desired and desires to please his nephew, the Very Christian King, and to procure for the United States all the advantages to which they aspire and which they may be able to obtain. But as His Catholic Majesty has not yet concluded with them any treaty by which their reciprocal interests have been regulated, he reserves to himself the doing so and the agreement at that time upon all that shall relate to the said independence; and from now on the Catholic King promises not to arrange, conclude, nor even to advance through his mediation, any treaty or arrangement with the said States, or relating to them, without informing the Very Christian King and without planning in concert with him everything that shall have connection with the mentioned article on independence.

ARTICLE V

For the future case of the peace and the definitive treaty which the war should lead to, His Very Christian Majesty intends to procure or acquire the following advantages or benefits:

(1) Revocation and cancellation of all articles of treaties which deprive His Very Christian Majesty of the liberty, which rightfully belongs to him, of constructing at Dunkirk such works in the water or on the land as he shall deem necessary; (2) expulsion of the English from the Island and the fishery of Newfoundland; (3) absolute and unlimited liberty of commerce in the East Indies, and of acquiring and fortifying such factories there as His Majesty finds convenient; (4) recovery of Senegal and the fullest liberty of commerce in Africa outside of the English factories; (5) irrevocable possession of the Island of Dominica; and (6) abrogation or complete execution of the treaty of commerce concluded at Utrecht in 1713 between France and England.

ARTICLE VI

If the Very Christian King succeeds in making himself master and ensuring to himself possession of the Island of Newfoundland, the subjects of the Catholic King will be admitted to fish there, and the two Sovereigns will for this purpose agree upon the advantages, rights and prerogatives which should be enjoyed by the said subjects of His Catholic Majesty.

ARTICLE VII

The Catholic King intends to procure, on his side, by means of the war and the future treaty of peace, the following advantages:

(1) Restitution of Gibraltar; (2) possession of the river and fort of Mobile; (3) restitution of Pensacola with all the coast of Florida along Bahama Channel so that no foreign power

may have an establishment on that channel; (4) expulsion of the English from the Bay of Honduras, and execution of the prohibition stipulated by the last treaty of Paris in 1763 against forming any establishment in that bay, any more than in the other Spanish territories; (5) revocation of the privilege accorded to the same English to cut dyewood on the coast of Campeche; and (6) restitution of the Island of Minorca.

ARTICLE VIII

In case the Catholic King shall succeed in keeping the English from access to the coast and bay of Campeche and from cutting dyewood there, His Catholic Majesty will accord this privilege to the subjects of His Very Christian Majesty, and agree with him upon the advantages, rights and prerogatives that they should enjoy.

ARTICLE IX

Their Catholic and Very Christian Majesties promise to make every effort to procure and acquire all the advantages specified above, and to continue these efforts until they have attained the end which they propose, mutually agreeing not to lay down arms or make any treaty of peace, truce or suspension of hostilities without having at least obtained and having respectively ensured the restitution of Gibraltar and the abrogation of the treaties relating to fortifications at Dunkirk, or, in the absence of this article, any other object in the wish of His Very Christian Majesty.

ARTICLE X

With regard to other conquests that the two contracting Powers may conjointly or separately make, they shall dispose of them for the common good of the alliance and their reciprocal convenience according to the circumstances which may arise.

ARTICLE XI

The cases which have not been mentioned or specified in the present Convention shall be settled and decided according to the text and spirit of the treaties subsisting between the two Monarchies, and especially according to the Family Compact which the two high contracting Parties promise anew to observe religiously.

ARTICLE XII

The ratifications of the present Convention shall be despatched and exchanged within the period of four weeks, or sooner if possible.

In faith of which we, the undersigned Ministers Plenipotentiary of His Catholic Majesty and His Very Christian Majesty, in virtue of the full powers above mentioned, have signed this Convention and have attached thereto the seals of our arms.

At Aranjuez, 12 April 1779.

Comte de MONTMORIN
Comte de FLORIDABLANCA

BIBLIOGRAPHICAL NOTE

Without attempting to describe the voluminous material which has appeared in recent years, reappraising with scholarly analysis the American Revolution, it is our purpose to indicate some of the material useful to the student of the foreign relations of the United States from 1775 to 1783. The sources which have been consulted and to which the reader is referred for further enlightenment, enabled us to get a pretty comprehensive vision of the real diplomacy of the United States, Great Britain, and France, in reference to the American Revolution.

The diplomatic correspondence of the United States is printed in Francis Wharton's *The Revolutionary Diplomatic Correspondence of the United States* (6 vols., 1889). This is sufficient for all except the most minute reference. It reprints with more careful editing much material already presented earlier by Jared Sparks's *The Diplomatic Correspondence of the American Revolution* (12 vols., 1829-1830). The archives of France have been digested honestly and thoroughly and in a representative manner in Henri Doniol's monumental publication, *Histoire de la participation de la France à l'établissement des États-Unis d'Amérique, correspondance diplomatique et documents* (5 vols., 1884-1899). See also B. F. Stevens, *Transcripts relating to the French Alliance*, in the Library of Congress. There is no complete publication of the diplomatic archives of the British Government for that period, but some of it is available in Volume III of Lord Edmond Fitzmaurice's *Life of William, Earl of Shelburne* (1875-1876) (references are to the original edition in three volumes, instead of to the revised edition in two volumes published in 1912, as the earlier edition is, from actual experience, more easily acquired from the libraries) and in Lord John Russell's *Charles James Fox. Memorials and Correspondence*, two volumes (1853); and particularly the B. F. Stevens *Facsimiles of Manuscripts in European Archives relating to America, 1773-1783*, the B. F. Stevens *Transcripts relating to the Peace Negotiations of 1782-1783*. The *Facsimiles* exist in some thirty libraries in the United States; the *Transcripts* are to be found in the Library of Congress, Manuscripts Division.

The various published works of Franklin (Sparks edition, Smyth edition, and E. E. Hale and E. E. Hale, Jr., *Franklin in France*); John Jay, and John Adams, reflect the history of the peace negotiations; and the works of other contemporary American "fathers"—Washington, Jefferson, Madison, etc.—must be consulted by the thorough student of the diplomacy of the American Revolution.

The recently published work of Yela Utrilla, *España ante la independencia de los Estados Unidos* (Lérída, Spain, 1925, 2 vols.), gives a vast amount of material from the Spanish archives, together with much material previously printed in American collections. It serves as a Spanish supplement to the documents published by Doniol.

A few monographs ought to be mentioned. By far the most brilliant study of the diplomacy of the Revolution is that of Professor Edward S. Corwin on *French Policy and the American Alliance of 1778* (1916). Franco-American relations from the viewpoint of Spanish policy in the Mississippi Valley are studied by Paul Chrisler Phillips in *The West in the Diplomacy of the American Revolution* (1913). Both of these are based extensively on Doniol. A recent French work of extraordinary merit is Bernard Faÿ's *L'Esprit révolutionnaire en France et aux États-Unis à la fin du XVIII^e siècle* (Vol. I, 1925), and *Bibliographie critique des ouvrages Français relatifs aux États-Unis, 1770-1800* (Vol. II, 1925). Volume III (1912) of the standard *History of the United States* by Edward Channing can not be overlooked.

On the question of gratitude or ingratitude to France, there is an early but admirable study in the *National Intelligencer*, of Washington, for 1847. A brief against France by an American citizen résident in Paris (who preferred not to disclose his identity), entitled "M. de Lamartine and the Americans," June 12, 1847, was published in the *National Intelligencer* for August 3, 1847. The case for France (or rather of the facts) as disclosed by the documents in the Ministry of Foreign Affairs in Paris, Foreign Office in London, in Shelburne papers, etc., is by Jared Sparks, in three papers: "France and the United States during the American Revolution: No. 1, Treaty of Alliance; No. 2, Attempted Negotiations; No. 3, Treaty of Peace." These are found in the *National Intelligencer* for August 28, 31, and September 7, 1847, respectively. Jared Sparks studied the documentary history, at home and abroad, of the

diplomacy of the American Revolution, more comprehensively than anyone before or since his time.

FOOTNOTES

¹ Francis Wharton, *The Revolutionary Diplomatic Correspondence of the United States*, II (1889), 79. This highly useful work is hereafter cited as "Wharton."

² Montmorin, French Ambassador in Madrid, in a confidential note (No. 71) to Vergennes, explained that according to Floridablanca (Spanish Minister for Foreign Affairs) "His Catholic Majesty will not recognize the independence of the United States until the English are themselves forced to do so by peace, that he will furnish all necessary aid, but not the guaranty asked for: 'He gives as the reason for the refusal by the King his master the fear that it will provide an example for his possessions.'" Henri Doniol, *Histoire de la participation de la France à l'établissement des États-Unis d'Amérique*, Tome III (1888), 753, note 3 [translation]. This is hereinafter cited as *Doniol*.

³ The *livre* was approximately the equivalent of the modern *franc*.

⁴ O. W. Stephenson, *The Supply of Gunpowder in 1776*, *Am. Hist. Rev.*, XXX (No. 2, January, 1925), 271, 281.

On February 7, 1777, Lee left Paris for Spain. That Government seems to have resolved before his arrival to render secret assistance to the Americans, but the plan of effecting it was settled in interviews with Lee.

^{4a} This is the opinion of William Cabell Bruce, now United States Senator from the State of Maryland, in his *Benjamin Franklin Self-Revealed*, II (1923), 321, 322: "It is by no means improbable that, if he had been our sole negotiator, he would not only have obtained for us all that was secured by his Fellow-Commissioners and himself but Canada besides. . . .

It is to be regretted by the United States, if the present happy lot of Canada is to be the subject of regret at all, that the desire of Franklin to secure Canada for them was not more urgently seconded by Adams and Jay. . . . Neither appears to have been zealously alive to the considerations, which led Franklin to cast a covetous eye upon Canada, and to make it one of the primary objects of his efforts to promote the interests of America during the peace negotiations."

⁵ Smyth, *Writings of Franklin* (1907), VI, 452, 453.

⁶ Samuel Flagg Bemis, British Secret Service and the French-American Alliance, *Am. Hist. Rev.*, XXIX, 485, 486.

⁷ Franklin, Deane, and Lee to the Committee of Foreign Affairs, Paris, December 18, 1777. Wharton, II, 452-453.

⁸ Bemis, *op. cit.*, 488, 489.

⁹ *Ibid.*, 490.

¹⁰ *The Deane Papers*, II, 313-314; Edward S. Corwin, *French Policy and the American Alliance of 1778* (1916), 153-154.

¹¹ For full details on the committee system, see G. C. Wood's *Congressional Control of Foreign Relations during the American Revolution, 1774-1789*.

¹² *Journals of the Continental Congress*, July 18 1776, V, 576 and note 1. The designation "United States of America" first appeared in the Declaration of Independence. Edmund C. Burnett, in *Am. Hist. Rev.*, XXXI, No. 1 (October, 1925), 79.

¹³ *Journals of the Continental Congress*, V, 815-816.

¹⁴ For the text of the two treaties, see this Appendix above.

¹⁵ For the text of this convention, see this Appendix above.

¹⁶ Wharton, I (1889), 355-363.

¹⁷ Washington's *Writings*, VI, 81; Wharton, I, 360.

¹⁸ G. Bancroft's *United States*, 183 Wharton, I, 360, *note*.

¹⁹ "In 1781 the British navy was composed of about eighty ships of the line in commission. This fleet much exceeded that of France both in ships and in armament, and hence Britain was able to keep a naval superiority in the American waters down to the alliance between France and Spain. This alliance

necessitated the distribution of the English fleet so as to cover Gibraltar and the West Indies and to protect England from an invasion which the ascendancy of the allies made feasible. Hence it was that when De Grasse reached the Chesapeake Bay, on August 31, 1781, he was able to bring with him twenty-eight ships of the line and six frigates, giving him control of those waters." *Ibid.*

²⁰ In conversation with Oswald on November 18, 1782, Adams said, as recorded in his Diary: "I said to him supposing the armed neutrality should acknowledge American independence by admitting Mr. Dana, who is not at Petersburg with a commission in his pocket for that purpose, to subscribe to the principles of their marine treaty, . . ." Wharton, VI, (1889), 10.

²¹ Wharton, IV, 274; V, 212; VI, 473.

²² John H. Haswell, *Treaties and Conventions concluded between the United States and other Powers since July 4, 1776* (1889), 1360 *et seq.*

²³ Fitzmaurice, III, 123.

²⁴ *Ibid.*, XX, 651.

²⁵ Wharton, V, 87.

²⁶ *Journals of the Continental Congress*, XXII, 312.

²⁷ *Ibid.*, 458.

²⁸ *Ibid.*, XXIII, 638.

²⁹ *Ibid.*, XX, 628.

³⁰ *Ibid.*, 648.

³¹ Corwin, *op. cit.*, 302, *note*.

³² "To have acknowledged that independence, and to have continued the war with France and Spain, seems to have been the favorite idea of Mr. Fox." Lord Russell's *Life of Fox*, I, 344; Wharton's *Digest of International Law* (2nd ed., 1887), III, 898.

"Judging from Fox's subsequent course on the navigation question, judging from his readiness to crush the maritime rights of the Union as far as he could even under the wise and

liberal articles of 1782, it is more than probable that, had he been at liberty to impose a new treaty on the United States, after having acknowledged their independence, he would have insisted on conditions which would have necessitated a renewal of the war." *Ibid.*, 900.

"Independence by grant . . . on its face involved a fallacy, since a dissolution of political connection, which is essential to independence, is a bilateral act, and if independence based on treaty was to be rejected, then there could be no acknowledgment of independence at all. And aside from this it was only by a treaty made at the time the United States was sustained on all sides by allies, and when a liberal ministry, acting on wise economical principles, was in power, that a pacification could have been effected that would, from its beneficial relations to both parties, have had any chance of permanency." *Ibid.*, 926.

³³ Smyth, VIII, 460.

³⁴ *Ibid.*, 461.

³⁵ In the diplomatic service of France at that time, there were two Gérards—one, generally called "Gérard" had been Vergennes' chief assistant at the time of negotiating the treaties of amity and commerce, and alliance, with France. He was thereafter appointed first minister of France to the United States. The other Gérard succeeded his brother as Vergennes' assistant, and is generally known as "de Rayneval."

³⁶ In a letter to Dr. Franklin under date of February 16, 1782, John Adams said, upon the authority of Henry Laurens, that "the Nation and the best men in it are for universal Peace and an express acknowledgment of American Independence, and many of the best are for giving up Canada and Nova Scotia." Smyth, VIII, 477.

And in a letter of May 2, to the Doctor, Adams said, on the same subject: "If there is a real Disposition to permit Canada to accede to the American Association, I should think there would be no great difficulty in adjusting all things be-

tween England and America, provided our Allies are contented too." Smyth, VIII, 480.

³⁷ Hales, *Franklin in France*, II, 52.

³⁸ *Ibid.*, 150-151.

³⁹ In Oswald's letter under date of June 9, to Lord Shelburne, Franklin is recorded as having said, "he thought the best way to come at a general peace was to treat separately with each party, and under distinct commissions to one and the same, or different persons.

"By this method, he said, many difficulties, which must arise in discussing a variety of subjects, not strictly relative to each other, under the same commission, and to which all the several parties are called, would be in a great measure avoided. And then at last there will only remain to consolidate those several settlements into one general and conclusive treaty of pacification; which, upon inquiry, I found he understood to be the indispensable mode of final accommodation.

"However material that part of the question might be, regarding the possibility of an equitable coalescence of so many different propositions and settlements, there was no explanation as to the extent of their relative dependence on each other. And I did not think it proper to ask for it. He only explained, as to the Commissions, that there might be one to treat with France, one for the Colonies, one for Spain, and, he added, one for Holland, if it should be thought proper. Mr. Grenville being very well with the Doctor, he has, no doubt, mentioned the same things to him; yet I thought it my duty to communicate to him the substance of this conversation." Sparks, *Franklin's Works*, IX, 323-324, *note*.

⁴⁰ Smyth, VIII, 513; Hales, II, 63.

In writing under date of June 28, 1782, to Luzerne, French minister at Philadelphia, Vergennes repeated his statement to Franklin: "that His Majesty could not treat of the interests of America because he had no power in this respect, and that, besides, it was necessary for the dignity of the King of Eng-

land, as for that of the United States that a direct negotiation on this question should be opened." Hales, *Ibid.*, 153.

⁴¹ Smyth, VIII, 526.

⁴² On this point, Jared Sparks says, in speaking of Franklin and his conversations with Oswald, that "*all the prominent articles of the treaty, as it was finally agreed to and ratified, were proposed and insisted on by him, before Mr. Oswald had seen either of the other American Commissioners.*" *Works of Benjamin Franklin*, IX, 354 note.

⁴³ Sparks, IX, 354, note.

⁴⁴ *Ibid.*, 354-355, note.

⁴⁵ Hales, II, 93.

⁴⁶ *Ibid.*, 111.

⁴⁷ *Ibid.*, 107.

⁴⁸ *Ibid.*, 113.

⁴⁹ "It is certain that Shelburne informed Franklin that Oswald represented his (Shelburne's) entire mind; that Oswald received from Franklin a specific proposal for the cession of Canada, and that this proposal, on the eve of Oswald's return to Paris for the purpose of communicating to Franklin Shelburne's views, was received by Shelburne without dissent. . . . Reasoning as Shelburne would have done under the circumstances, the probability is that if the cession of Canada had been pressed, and in part as a basis for refugee relief, he would, with his usual fearlessness, have agreed to such cession. Nor is it likely that this settlement would have been resisted by George III, who then cared nothing for Canada, but whose heart was set on indemnity to the refugees." Francis Wharton, *A Digest of International Law*, III (2nd ed., 1887), 915.

⁵⁰ Hales, II, 116.

⁵¹ *Ibid.*, 119.

⁵² "'Our Empire,' said Jay, the President of the Congress, 'is already too great to be well governed, and its Constitution is consistent with the passion for conquest.'" Wharton, I, 360, note.

"Poor as we are, yet as I know we shall be rich, I would rather agree with them to buy at a great price the whole of their right on the Mississippi, than sell a drop of its waters. A neighbour might as well ask me to sell my street door." Franklin to Jay, Passy, October 2, 1780. Jay, *Correspondence*, I, 433.

The *Diario Curiosísimo* of Count d'Aranda, setting forth in detail his informal negotiations with John Jay in regard to the western boundary line of the United States, is published in Volume II of Yela Utrilla's *España ante la independencia de los Estados Unidos*. It shows that at Aranda's solicitation Vergennes countenanced efforts on the part of Rayneval to effect a compromise between the insistence of John Jay to secure the Mississippi as the western boundary of the United States and Aranda's desire to set the western boundary at a line drawn from the western extremity of Lake Erie to the mouth of the Great Kanawha River, and thence south to a point near the western boundary of the present State of Georgia. The result was the famous memorandum of Rayneval, mentioned in our text.

In connection with this Rayneval memorandum, which undoubtedly had Vergennes's approval, it is necessary to point out that at no time was it made a formal French proposal, Rayneval referring to it merely as his personal idea. Vergennes did not at any time give it his open sanction, nor himself insist upon it in his conferences with the American representatives. Dr. Yela Utrilla's book should be consulted in detail for Spanish policy during the American Revolution.

⁵³ *Ibid.*, V, 241, note.

⁵⁴ *Ibid.*, 241-242, note.

⁵⁵ Jay, *Correspondence*, II, 402-403.

⁵⁶ See Jay's letter to Secretary Livingston, November 17, 1782. *Ibid.*, 403 *et seq.*

^{56a} "Mr. Oswald's correspondence," wrote the King to Shel-

burne, on May 14, 1782, "carries the marks of coming from a man of sense." Shelburne, III, 193.

"I have read the two letters Lord Shelburne received yesterday from France, and shall fairly owne that by what I have seen from the correspondence of Mr. Vaughan I have but little opinion of his talents. . . . Mr. Oswald seems very sensible and the present letter before me indicates no inclination to indiscretion." George III to Shelburne, August 12, 1782, Bancroft MSS; Wharton, I, 647.

"As to Mr. Vaughan, he seems so willing to be active and so void of judgment, that it is fortunate that he has had no business, and the sooner he returns to his family the better." George III to Shelburne, December 22, 1782, *Ibid.*

⁵⁷ Hales, II, 144.

⁵⁸ *Ibid.*, 146-147.

⁵⁹ Stevens, *Transcripts relating to the Peace Negotiations of 1783*.

⁶⁰ Fitzmaurice, III, 283.

⁶¹ *Ibid.*, 287.

⁶² Fitzmaurice, III, 282.

⁶³ Jay's *Correspondence*, II, 448.

⁶⁴ Adams, *Works*, III, 299, 300.

⁶⁵ *Ibid.*, II, 336.

⁶⁶ Fitzmaurice, III, 294.

⁶⁷ Wharton, III, 301.

⁶⁸ Adams, *Works*, VII, 661.

⁶⁹ Hales, II, 179.

⁷⁰ Edward Channing, *A History of the United States*, III (1912), 384.

⁷¹ Adams, *Works*, VII, 663.

⁷² Fitzmaurice, III, 296.

⁷³ Hales, II, 176.

⁷⁴ Adams, *Works*, III, 304.

⁷⁵ November 11. *Ibid.*, 307-308.

⁷⁶ *Ibid.*, 324.

⁷⁷ Adams, *Works*, III, 327.

⁷⁸ Hales, II, 180.

⁷⁹ *Ibid.*, 185, 186.

⁸⁰ *Ibid.*, 188.

⁸¹ November 25. Adams, *Works*, III, 330.

⁸² *Ibid.*, 333.

⁸³ *Ibid.*, 330.

⁸⁴ Hales, II, 191.

⁸⁵ Adams, *Works*, III, 334.

⁸⁶ Hales, II, 192.

⁸⁷ Fitzmaurice, III, 321.

⁸⁸ "It is agreed, that his Britannic Majesty will earnestly recommend it to his Parliament to provide for and make a compensation to the merchants and shopkeepers of Boston, whose goods and merchandise were seized and taken out of their stores, warehouses, and shops, by order of General Gage and others of his commanders and officers there; and also to the inhabitants of Philadelphia, for the goods taken away by his army there; and to make compensation, also, for the tobacco, rice, indigo, and negroes, &c., seized and carried off by his armies under Generals Arnold, Cornwallis, and others, from the States of Virginia, North and South Carolina, and Georgia, and also for all vessels and cargoes, belonging to the inhabitants of the said United States, which were stopped, seized, or taken, either in the ports, or on the seas, by his governors, or by his ships of war, before the declaration of war against the said States.

"And it is further agreed, that his Britannic Majesty will also earnestly recommend it to his Parliament to make compensation for all the towns, villages, and farms, burnt and destroyed by his troops, or adherents, in the said United States." Article proposed by Benjamin Franklin and read to the commissioners before signing the preliminary articles of the Treaty of Peace between the United States and Great Britain. Smyth, VIII, 632.

⁸⁹ Adams, *Works*, III, 335.

⁹⁰ November 29, 1782. Smyth, VIII, 627.

⁹¹ Channing, III, 370.

⁹² Adams, *Works*, III, 349.

⁹³ *Ibid.*, VIII, 18.

⁹⁴ "The words inclosed in parentheses are not in Mr. Jay's draft of this paragraph." *Ibid.*, 20.

⁹⁵ Smyth, VIII, 634.

⁹⁶ *Ibid.*, 630.

⁹⁷ *Ibid.*, 634.

⁹⁸ *Ibid.*, 620.

⁹⁹ *Ibid.*, 641.

¹⁰⁰ "We met at Mr. Laurens's," says Adams in his Diary, under date of December 17, "at Dr. Franklin's summons or invitation, at eleven o'clock. He produced a letter to him from the Count de Vergennes, and a project of an answer which he had drawn up which we advised him, unanimously, to send." Adams, *Works*, III, 349.

¹⁰¹ Smyth, VIII, 642.

¹⁰² "This is to inform you, and to request you to inform the Congress, that the preliminaries of peace between France, Spain, and England, were yesterday signed, and a cessation of arms agreed to by the ministers of those powers, and by us in behalf of the United States, of which act, so far as relates to us, I enclose a copy. . . . Holland was not ready to sign preliminaries, but their principal points are settled." Franklin to Livingston, January 21, 1783, Smyth, IX, 9.

¹⁰³ Wharton, VI, 39.

¹⁰⁴ In a personal letter of Jay, under date of December 30, 1782, Livingston analyzed Jay's suspicions of France, and considered them unfounded. Apparently the Secretary was able, at a distance, to form a more correct view of the predicament than was Jay, on the spot. Thus, he said: "for my part I believe their situation with respect to Spain is very delicate and that they are embarrassed by her demands." In speaking

of the Marbois letter, he said that its writer had "always endeavored to persuade us that our claim to the fisheries was inadmissible. . . . no steps have been taken in consequence of it." And he added that the letter of Marbois and the conduct of the Court of France "marks the distinction between a great politician and a short-sighted one." On the question of the authenticity of the letter, he made some pertinent inquiries: "I wish you had in a private letter to me in cipher informed me how you got at the letter of . . . [Marbois, March 13, 1782], and how it happened to be copied in English. I more particularly wish to know whether it passed through the hands of either of the British commissioners. If it has, it will be of consequence to see the original; for though true on the whole, yet it may have been colored in the translation. That which follows what is said of the Great Bank is nonsense, or if it conveys any meaning I think it not such as a man of common sense would speak." Wharton, VI, 174-176.

Secretary Livingston strongly disapproved of the action of the Commission in his official letter of March 18 to the President of Congress, saying on March 18: "The separate article is in itself an object of no moment . . . but it is extremely well calculated to sow the seeds of distrust and jealousy between the United States and their allies. It demonstrates a marked preference for the English over the present possessors, and seems to invite Britain to reconquer it. Though this may promote our particular interest, it never can consist with our honor to prefer an open enemy to a nation engaged in the same cause with us, and closely connected to our ally. This article would, in my opinion, if avowed by the United States, fully justify Spain in making a separate peace without the least regard to our interest." *Ibid.*, 314.

APPENDIX

TO SKETCH OF R. R. LIVINGSTON

BIBLIOGRAPHICAL NOTE

Livingston's whole life is yet to be fully written. Aside from the biographical dictionaries and the encyclopedias, only the following inadequate sketches are available: Alexander, D. S., Robert R. Livingston, Author of the Louisiana Purchase, in the *Proceedings of the N. Y. State Hist. Assoc.* VI, 101, (Newburgh, 1906); Clarkson, T. S., *A Biographical History of Clermont or Livingston Manor* (Clermont, 1869); Delafield, J. L., Chancellor Robert R. Livingston of New York and his Family, in *XVIIth Annual Report of the American Scenic and Historic Preservation Society*, 311 (Albany, 1911); DePeyster, Frederic, *A Biographical Sketch of Robert R. Livingston* (Pamphlet, N. Y. 1876). The materials for a biography of Livingston, as well as for the foregoing sketch, are widely scattered. The principal collections of manuscripts to be consulted are the Papers of the Continental Congress and the Keane Papers in the Library of Congress, the Baneroft and Miscellaneous Manuscripts in the New York (City) Public Library; the Livingston, Duane, Jay, King, McKesson, Olin and Miscellaneous Papers in the library of the New York Historical Society. There are a few Livingston papers in the New York State Library and the Missouri Historical Society has recently (1925) acquired a number of Livingston letters. Printed sources include, first and foremost, Francis Wharton's *Revolutionary Diplomatic Correspondence of the United States* (6 vols., Washington, 1889), and second, *The Journals of the Continental Congress* (Library of Congress edition, Washington, 1904 *et seq.*). These should be supplemented by *The Journals of the American Congress from 1774 to 1788* (4 vols., Washington,

1823, especially Volume IV); *The Secret Journals of the Acts and Proceedings of the Continental Congress* (Wait's edition, 4 vols., Boston, 1821); *Journals of the New York Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety* (2 vols., Albany, 1842); Burnett, E. C., *Letters of the Members of the Continental Congress* (Washington, 1921 *et seq.*); O'Callaghan, E. B., *Documentary History of the State of New York* (4 vols., Albany, 1849-1851); *American State Papers, Foreign Relations* (6 vols., Washington, 1828). Much useful information is contained in the published writings of Elias Boudinot, Silas Deane, Benjamin Franklin, Alexander Hamilton, John Jay, Thomas Jefferson, Rufus King, Henry Laurens, Arthur and William Lee, James McHenry, James Madison, James Monroe, Charles Thomson and George Washington. Of secondary works, the following are indispensable: Doniol, H., *Histoire de la participation de la France à l'Établissement des États-Unis d'Amérique* (5 vols., Paris, 1886-92); Livingston, E. B., *The Livingstons of Livingston Manor* (N. Y., 1910); Hunt, C. H., *Life of Edward Livingston* (N. Y., 1864); Hunt, Gaillard, *The Department of State* (New Haven, 1914); and Jones, Thos., *History of New York during the Revolutionary War* (2 vols., N. Y., 1874). These should be supplemented by the biographies of the men mentioned above, those of Gouverneur and Robert Morris, and such works as: Adams, H., *History of the United States* (9 vols., N. Y., 1889-91); Barbé Marbois, F., *Histoire de la Louisiane et de la Cession* (Paris, 1829); Hill, C. E., *Leading American Treaties* (N. Y., 1922); Johnson, W. F., *America's Foreign Relations* (2 vols., N. Y., 1916). Other works are cited in footnotes.

FOOTNOTES

¹ Henri Doniol *Histoire de la participation de la France à l'établissement des États-Unis d'Amérique*, IV, 64-66, 597, V, .

303-304; *Journals of the Continental Congress* (Library of Congress edition, cited below as *Journals*), XXI, 851, 930; *Deane Papers*, IV, 447, (Collections of N. Y. His. Soc. 1889).

² Alexander, D. S., *Political History of the State of New York*, I, 79.

³ Hunt, C. H., *Life of Edward Livingston*, chapter i; Livingston, E. B., *The Livingstons of Livingston Manor*, vi-viii, xxi-xxvi, 55-58, 105-112.

⁴ For Edward Livingston, Secretary of State, see Volume IV of this series.

⁵ *New York Gazette*, May 30, 1765.

⁶ *Journals*, II-VI, *passim*; Burnett, E. C., *Letters of the Members of the Continental Congress*, I, *passim*.

⁷ *Journals of the New York Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety*, I, II, *passim*; Numerous manuscript letters between Livingston and his contemporaries in the Bancroft Collection, New York Public Library (cited below as "Bancroft Collection") and the Keane Collection, Library of Congress.

⁸ *Journals*, XV-XVII.

⁹ Manuscript Papers of the Continental Congress (cited below as C. C. Papers), now in the Library of Congress; No. 79, Vol. III, Feb. 26, 1783; Wharton, F., *Revolutionary Diplomatic Correspondence of the United States*, I, 415.

¹⁰ *Op. cit.*, I, 457.

¹¹ C. C. Papers, 79, I, 287; Wharton, *op. cit.*, IV, 796, 797, V, 413.

¹² Wharton, *op. cit.*, IV-V, *passim*; *Journals*, XXI, 1072, 1081, 1085.

¹³ Wharton, *op. cit.*, IV, 846.

¹⁴ *Journals*, XXII, *passim*; Wharton, *op. cit.*, IV, 230, V, 132, 199-202; Hunt, *Department of State*, 18-28.

¹⁵ C. C. Papers, 79, III; *Papers of James Madison*, I, 201, 207; *Journals*, XXII-XXIV; Wharton, *op. cit.*, V, 307, 399, 402.

¹⁶ C. C. Papers, 79, II; *Papers of Charles Thomson* (Collections of N. Y. His. Soc. 1878), 61-62; *Journals*, XXII; Wharton, *op. cit.*, V.

¹⁷ C. C. Papers, 79, III; *Journals*, XXI, 1121, XXIV, 156; Wharton, *op. cit.*, VI, 265.

¹⁸ *Journals*, XXII-XXIV; Wharton, *op. cit.*, I, 559-575; IV-VI.

¹⁹ See *post* p. 172.

²⁰ Bancroft Collection; C. C. Papers, 79, III; Madison's *Papers*, I; Washington's *Writings*, VIII; *Journals*, XXII, XXIV, XXV; Wharton, *op. cit.*, IV-VI.

²¹ C. C. Papers, 79, I, II, No. 118, pp. 296, 438; Bancroft Collection; *Journals*, XX-XXIII; Wharton, *op. cit.*, IV-VI.

²² Cf. Chapters I and V.

²³ C. C. Papers, 79, I, II, 82, II, 84, IV; Bancroft Collection; Franklin's *Writings*, VIII-IX; Doniol, *op. cit.*, I-V; *Journals*, IX, XXI-XXIV; Wharton, *op. cit.*, IV-VI.

²⁴ Maintained by the United States to be 31° N. Lat. Spain did not admit this. See Chapter III of sketch of Jay, this volume.

²⁵ Jay was in Paris when he received this dispatch.

²⁶ Livingston had a few items of business with Spanish officials in America, such as the case of the American brig mistakenly detained in Santo Domingo as a British vessel. Governors Miró of Louisiana and Unzaga of Cuba reported to Rendon that two Massachusetts captains had seized a Spanish merchant ship in Spanish waters and had fired upon the Spanish flag. Rendon got Luzerne to present the matter to Livingston who recommended that Congress advise Argote, the aggrieved ship owner, to prosecute his claims in the courts of Massachusetts; that Congress send the governor of that state the documents and urge him to assist Argote; that the items dealing with violations of international law be referred to a committee for investigation. The recommendations were adopted.

²⁷ At the instance of the Portuguese minister Franklin brought to Livingston's attention a Portuguese vessel which had been condemned by an American prize court. Livingston procured a rehearing.

For Spanish and Portuguese affairs, see C. C. Papers, 79, I, III, 82, II, No. 118; Bancroft Collection; *Correspondence and Public Papers of John Jay*, II-III; *Journals*, XX-XXV; Wharton, *op. cit.*, I, ch. v, IV-VI; Chapman, *History of Spain*, 389-397.

²⁸ C. W. F. Dumas, a Swiss authority on international law, residing at the Hague, had been chosen in 1775 by Franklin, whose friend he was, to correspond with the secret committee of Congress. Franklin suggested Dumas as a secretary for Laurens in 1780, later for Adams. When the latter joined in the peace negotiations, Dumas remained in charge of American interests at the Hague.

²⁹ It was abrogated by the overthrow of the Dutch Republic in 1795. For the text of it cf. Malloy, W. A., *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers, 1776-1909*, II, 1233-1245.

³⁰ Carpenter, W. S., The United States and the League of Neutrals, 1780, *American Journal of International Law*, XV (N. Y., 1921), 511-522. For Adams's Dutch mission, cf. C. C. Papers; 79, I, III, 84, IV, 91, I, 118; *Life and Works of John Adams*, VI-VIII; *Journals*, XVII-XXIV; Wharton, *op. cit.*, I, IV-VI. For the Armed Neutrality, cf. Scott, J.B., *The Armed Neutralities of 1780 and 1800*.

³¹ Of course he had known Jay since college days, and had been thrown with Adams and Franklin in Congress. He may have met Dana also.

³² C. C. Papers, 79, II; *Journals*, XVIII-XXV; Wharton, *op. cit.*, I, IV-VI.

³³ Professor W. F. Johnson is entirely of Dana's opinion that Vergennes and Verac were treacherously opposing Dana's efforts. (*America's Foreign Relations*, I, Chapter iv). My

own researches lead me to feel that Livingston was right in thinking that the French officials understood Russia's attitude better than did Congress or Dana.

³⁴ Cf. p. 133.

³⁵ Adams had assured the Dutch that America would not be able in a thousand years to manufacture enough for her own wants, much less compete in the European markets !

³⁶ See *ante*, pp. 172-173.

³⁷ About 32° 28" N. Lat.

³⁸ Article IV agreed that creditors on either side should "meet with no lawful impediment in the recovery" of *bona fide* debts "heretofore contracted."

³⁹ C. C. Papers, 79, II; Bancroft Collection; Doniol, *op. cit.*, IV-V; *Journals*, XXII-XXV; Malloy, *op. cit.*, I, 580 *et seq.*; Wharton, *op. cit.*, IV-VI; writings and biographies of Adams, Franklin, Jay, Jefferson, LaFayette, Laurens, Madison and Washington.

⁴⁰ C. C. Papers, 79, I, III; 91, I; 92; *Journals*, XXII-XXV; Wharton, *op. cit.*, IV-VI.

⁴¹ C. C. Papers, 79, II; *Journals*, XXII, XXIV; *Letters of William Lee*, III, 856; Wharton, *op. cit.*, V-VI.

⁴² C. C. Papers, 79, III; Duane and Livingston Papers, N. Y. H. S.; *Journals*, XXIII, XXIV; *Journals of the American Congress*, IV; Wharton, *op. cit.*, VI.

⁴³ In McKesson Papers, N. Y. H. S. cf. Miner, C. E., *Ratification of the Federal Constitution by the State of New York*.

⁴⁴ See Volume III of this series.

⁴⁵ Livingston and King MSS., N. Y. H. S.; *American State Papers, Foreign Relations*, II; Barbé Marbois, F., *Histoire de la Louisiane et de la Cession*; biographies and writings of Jefferson, King, Madison and Monroe.

⁴⁶ Albany *Argus*, Jan. 20, 1901.

⁴⁷ *A Century of American Diplomacy*, 97.

APPENDIX

TO SKETCH OF JOHN JAY

BIBLIOGRAPHICAL NOTE

The principal sources for a study of John Jay as Secretary for Foreign Affairs consist of the diplomatic correspondence of his office, and that of the governments with which he had to transact business.

The official diplomatic correspondence of the United States is printed completely enough for all except the most detailed investigation, in *Diplomatic Correspondence of the United States of America, September 10, 1783, to March 4, 1789* (7 vols., Francis P. Blair, Washington, 1833, and another edition printed by Blair and Rives, Washington, 1837, in 3 vols.), here cited as *Dip. Corres., 1783-1789*.

The correspondence of the French ministers to the United States, and their instructions during the same period exist in transcript in the MSS. Division of the Library of Congress. Selected portions are printed in the appendix of G. Bancroft, *History of the Constitution of the United States* (N. Y., 1882, 2 vols.). The most significant documents of the correspondence of the French minister, De Moustier, 1787-1789, are printed in *Am. Hist. Rev.*, VIII, 709-732, IX, 86-96. There were no established diplomatic relations between the United States and Great Britain before 1791, hence no correspondence of British diplomatic representatives in the United States. There are, however, the reports of British observers in the United States during this period, now existing in ms. in the British Record Office, Foreign Office Papers; and the dispatches of the British consuls, particularly of Sir John Temple, at New York, may also be found there. For a description of these, and of British-American relations, 1783-1789, see S. F. Bemis, *Jay's Treaty: A Study in Commerce and Diplomacy* (N. Y., 1923).

The dispatches of Gardoqui, Spanish representative in the United States, 1783–1789, exist in transcript in the *Gardoqui Despatches* in the University of Chicago Library. The *Secret Journals of Congress* (4 vols., Boston, 1821) contain the minutes, but not the debates on foreign affairs. The printed works of the various “fathers”—Washington, Jefferson, Madison, Hamilton, as well as Jay—are useful sources.

Jay's correspondence is printed only in part in *Correspondence and Public Papers of John Jay* (H. P. Johnston, Ed., 4 vols., N. Y., 1890–1893). No adequate biography of Jay exists, though the writing of one would be a distinct service to American history. The son, William Jay's *Life and Writings of John Jay* (2 vols., N. Y., 1833), is marked by filial piety and lacks the advantage of historical studies made during the last century, but it was the first publication of any of Jay's papers. William Whitelock's *Life and Times of John Jay* (N. Y., 1887) is not adequate. The sketch in Henry Flanders' *Life and Times of the Chief Justices* (Phila., 1858) is not enlightening as to Jay's diplomatic career. The best biography is the short one by a descendant, George Pellew, *John Jay* (Am. Statesman Series, N. Y., 1890). None of the previous students of Jay has had the advantage of reading the official correspondence of his adversaries in the diplomatic affairs in which he was engaged.

It is not intended to enumerate here the many monographs and other secondary accounts dealing with this period, but one should note Gaillard Hunt's *The Department of State* (New Haven, 1914) as an indispensable help to any study of the administration of early American foreign affairs.

FOOTNOTES

¹ J. B. Scott, *The United States of America; a Study in International Organization*, 111–117.

² Pellew, *John Jay*, 22.

³ Pellew, *op. cit.*, 138.

⁴ *Correspondence and Public Papers of John Jay*, II, 262.

⁵ The salary of the Secretary had been fixed at an early date at \$4,000. By an act of February 2, 1782, the Secretary had been authorized to appoint a secretary of his own at a salary of \$1,000 a year, and one, or if necessary, more clerks at a salary of \$500 per annum. By a subsequent act of Congress of March 1, 1782, the Secretary was authorized to appoint two undersecretaries, the first at a salary of \$800, and the second at \$700. This act was repealed April 12, 1785. Gaillard Hunt, *The Department of State*, 42-46.

⁶ J. C. Guggenheimer, in *Essays in the Constitutional History of the United States in the Formative Period, 1775-1789*, 165; by J. F. Jameson, *et al.*

⁷ George Bancroft, *History of the Formation of the Constitution of America*, I, 479.

⁸ For status of these Prussian treaties in 1917, see J. B. Scott, *Treaties of 1785, 1799, and 1828 between the United States and Prussia, as Interpreted in Opinions of Attorneys-General, Decisions of Court, and Diplomatic Correspondence*.

⁹ On this subject see E. C. Burnett, Note on American Negotiations for Commercial Treaties, 1776-1786, *Am. Hist. Rev.*, XVI, 579-587.

¹⁰ See E. C. Burnett in *Am. Hist. Rev.*, XVIII, 769-780.

¹¹ Hartley to Fox, Bath, Nov. 6, 1783, *Hartley Papers*, IV, 49, Leiter Library Collection.

¹² Italics inserted.

¹³ Wharton, VI, 468.

¹⁴ *Ibid.*

¹⁵ These debts were variously estimated at from £2,000,000 to £5,000,000, which figure the British Government itself believed grossly exaggerated. In 1802, by a compromise settlement, £600,000 was accepted in full satisfaction.

¹⁶ The other posts on American soil still under British occupation were: Oswego, on the New York bank of the St. Law-

rence, and Dutchman's Point and Pointe-au-Fer at the north end of Lake Champlain.

¹⁷ Another issue between the two countries related to the precise location of the northeast boundary, arising over the doubtful identity of the St. Croix River. Though this controversy was disturbing to Massachusetts, it was not a matter of major moment, and could have been easily adjusted as soon as there was a possibility of settling the larger issues. The gap in the northwestern boundary, between the source of the Mississippi and the northwesternmost corner of the Lake of the Woods, was not discovered until Washington's Administration.

¹⁸ Great Britain's treaty of peace with the United States, which went into effect simultaneously with the French and Spanish treaties, recognized the line of 31° as the southern boundary of the United States from the Mississippi east to the Apalachicola. A contingent provision in the preliminary articles of November 30, 1782, had stipulated that if Great Britain should continue in possession at the definitive peace, the boundary of West Florida should be the line of latitude of the mouth of the Yazoo River.

¹⁹ The Spanish Government was most uncertain about these loans. Titles existed to no more than \$150,000, made by Jay during his stay in Madrid.

²⁰ One *livre* equalled about 18.15 cents. See author's article in *N. Y. Times Current History Magazine*, March, 1926.

²¹ *Archives des Affaires Étrangères, Correspondance Politique, États-Unis*, Vol. XXVIII, folio 437. Partly printed in G. Bancroft, *History of the Formation of the Constitution of the United States*, I, 404.

²² *Am. Hist. Rev.*, VIII, 713.

²³ *Dip. Corres.*, I, 638, June 16, 1786. Jay indicated the thought of his report to Congress in October of that year on the subject of British debts, in a passage to Jefferson: "The affair of our posts is a serious business, and the more so as in my opinion Britain has too much reason on her side. They who ask equity should do it." *Ibid.*, I, 723.

²⁴ Jefferson to Jay, Paris, May 23, 1786, *Dip. Corres.*, I, 752.

²⁵ Bancroft, *op. cit.*, I, 341.

²⁶ For the decree, see Isambert, *Anciennes Lois Françaises*, XXVII, 459. The free ports were the *carénage* of Santa Lucia; Saint Pierre, in Martinique, Pointe-à-Pitre in Guadeloupe; Scarbourg, in Tobago; Cap Français, Port-au-Prince, and Saint Louis in San Domingo.

²⁷ F. L. Nussbaum, American Tobacco and French Politics, 1783-1789, *Pol. Sci. Quar.*, XL, 497-516.

²⁸ *Correspondence and Public Papers of John Jay*, III, 199.

²⁹ *Ibid.*, 222-223.

³⁰ See E. G. Bourne, *Essays in Historical Criticism*. Jay wrote to John Lovell, May 10, 1785: "It is my first wish to see the United States assume and merit the character of one great nation, whose territory is divided into different states merely for more convenient government and the more easy and prompt administration of justice, just as our several states are divided into counties and townships for the like purposes." Pellew, *op. cit.*, 249. Jay wrote five numbers of the *Federalist*, Nos. II, III, IV, V, and LXIV.

³¹ Hunt, *Department of State*, 67.

³² The reader is referred to the author's monograph on the subject, *Jay's Treaty; a Study in Commerce and Diplomacy* (Macmillan, 1923), and to his forthcoming monograph on *Pinckney's Treaty; a Study of America's Advantage from Europe's Distress* (Johns Hopkins Press, 1926).

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THE
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AND THEIR DIPLOMACY

VOLUME II

THE AMERICAN SECRETARIES OF STATE AND THEIR DIPLOMACY

SAMUEL FLAGG BEMIS

EDITOR

J. FRANKLIN JAMESON

H. BARRETT LEARNED

JAMES BROWN SCOTT

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VOLUME II

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EDITOR'S PREFACE

TO VOLUME II

THE redemption of American territorial integrity, the establishment of American neutrality, the question of neutral rights in the wars of the French Revolution, Jay's Treaty of 1794, and the reaction of France to it; the Mississippi Question and the Spanish Treaty of 1795; increasing vexation over the impressment issue with Great Britain; these are the more important questions of American foreign policy which conspired to make the years 1789 to 1800 as vitally critical in the field of foreign affairs as those from 1783 to 1789 had been in the so-called "critical period" of our domestic constitutional history.

Three remarkable Virginians, Thomas Jefferson, Edmund Randolph and John Marshall, and one unusual New Englander, Timothy Pickering, of Massachusetts, administered the Department of State during these critical years when the United States and its new Constitution were on trial before the world.

In the sketch of Jefferson as our first Secretary of State, the Editor has endeavoured to describe and to analyze the principal subjects of his diplomacy and how he handled them: with Great Britain, over issues arising from the execution, or lack of it, of the treaty of peace; with Spain, concerning the navigation of the Mississippi, occupied posts, the southern boundary and Indian in-

viii EDITOR'S PREFACE TO VOLUME II

trigues—issues in the Southwest which stood out in sinister symmetry with those pending simultaneously with Great Britain in the Northwest; with France, over the question of payment of the moneys borrowed during the Revolution, and the continuance of the Franco-American alliance; and finally, the problem of American neutrality, when this nation in 1793 for the first time as a neutral was confronted by a great world war, and when the history of our own diplomacy during and since the Revolution was drawn upon for the formulation of a foreign policy which has stood the test of time remarkably well.

President Dice Robins Anderson has had the task of setting forth the complicated history of Edmund Randolph, in carrying on the policy of Jefferson against an increasingly heavy and influential Federalist opposition which demanded closer relations with Great Britain—evidenced so strikingly in the capitulation, in maritime rights, in Jay's Treaty—because of the dominant factor which British commerce played in supporting, through the levying of the American tariff laws, American credit and with it the success of the new Government of the Constitution of 1788. The downfall of Randolph and the financial difficulties of that Secretary present an involved chapter, which Dr. Anderson has presented for the reader's judgment.

The late Professor Henry Jones Ford has written a sketch of Timothy Pickering as a diplomat, drawn from the collection of his private papers as well as his dispatches. He has analyzed the problems of that Secretary in reconciling France and Spain to the provisions of Jay's Treaty, with its maritime provisions so grossly

inconsistent with our treaty obligations with the continental powers. In the performance of this task the truculent Pickering, with his vitriolic pen, stands forth as a much more passionate character than the ordinary impressions which have come down to us of that neo-puritan figure.

When Adams cleared his political household of Hamilton's henchmen he summoned to the State Department John Marshall, whose legal acumen was now substituted for the subjective influence of Hamilton and Pickering. Rather than to lean toward a British rapprochement against France, the tendency of his predecessor, Marshall began to steer a strictly impartial course between France, now reconciled by the convention of 1800, and Great Britain, whose violations of neutral rights could never be overlooked by a man of Marshall's judicial temperament. Marshall's few months in office served to define neutral rights and to assert them in theory against both Great Britain and France. Before any practical application of Marshall's juridical position could be asserted, the election of 1800 resulted in the advent of Jefferson to the Presidency. Marshall had stepped into the Chief Justiceship of the Supreme Court and with a departing letter of advice bequeathed to his successor James Madison the great issues of neutral rights and impressment which were to pass off the stage only with the War of 1812. The Honourable Andrew J. Montague has set forth the state papers of John Marshall concerning these issues, which constitute the significant part of his brief career as Secretary of State.

S.F.B.

THOMAS JEFFERSON
SECRETARY OF STATE
MARCH 22, 1790, TO DECEMBER 31, 1793

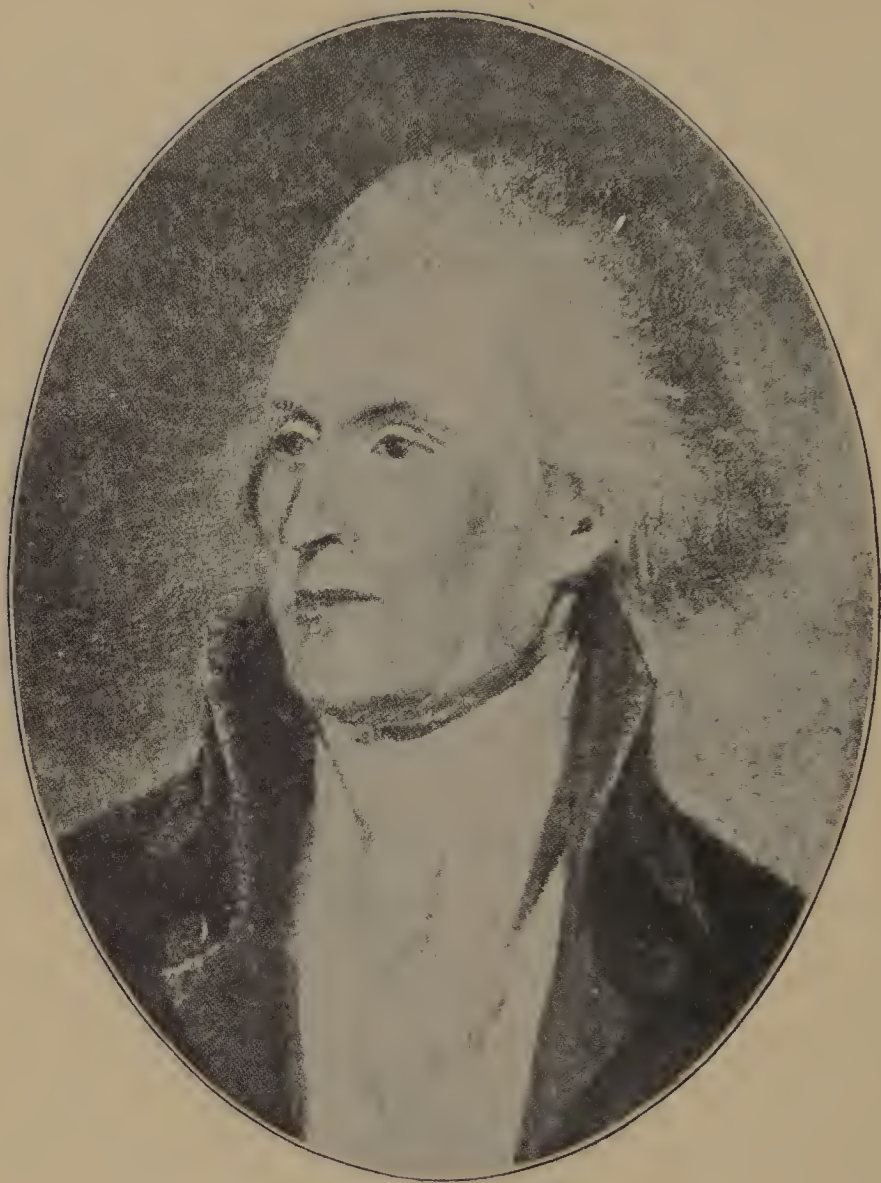
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THOMAS JEFFERSON

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Th. Jefferson

THOMAS JEFFERSON

CHAPTER I

THE FIRST SECRETARY OF STATE AND THE FOREIGN PROBLEMS OF THE NEW GOVERNMENT

IN installing the new government under the Constitution George Washington appointed the "heads of departments" primarily on the basis of merit and qualifications for the particular places. The President considered John Jay as the ablest man then available to the new government for active administrative work. To him he offered choice of the principal offices at the President's disposal. Jay took the quiet post of Chief Justice. Next to Jay the men of vigorous years and greatest experience in diplomacy were John Adams and Thomas Jefferson. Adams was now Vice President. The logical man for Washington's choice as Secretary of State was Jefferson. The President offered him the post October 13, 1789, as Jefferson was starting for a visit home from France. Jefferson accepted, February 14, 1790, some time after his arrival on American shores. He took up the duties of office on March 22. In the interim John Jay had continued in charge of the business of the old office of the Secretary for Foreign Affairs.

One of the leading American statesmen of the time,

learned in history and politics, dexterous with his pen, a keen student of human nature and personalities, the greatest political philosopher America has yet produced, he was then ripe with over five years' experience at the focal point of European diplomacy, Paris, and admirably trained for the new office.

Jefferson was the first Secretary of State of the Republic, in many ways the most interesting. His career both before and after his incumbency of that office is more important to the student of history and to American citizens today than his years in charge of the Department. Regrettably there is no room in this series for those wider and more important phases of his life. Nevertheless the years 1790 to 1793, during which Jefferson guided our foreign policy, under Washington's judicious leadership, are among the most vital in our diplomatic history, and if Jefferson's long life had not been full of other important public labour, his services as Secretary of State alone would still deserve well of his country and give him a high place in its history.

Born in 1743 of solid planter parentage on a new frontier farm of Virginia, Thomas Jefferson developed into an athletic and serious manhood under the shadow of the impending American Revolution. His native acumen was early brought under a stern and unswerving training, self-imposed and directed into wide and careful study, of the law as a profession and means of future livelihood, of history, languages and science to satisfy his incessant mental curiosity and to exercise a rarely equalled intellectual alacrity. He went to school at William and Mary College, where his eager mind made much of the advantages for instruction, but it was

rather in the self-discipline achieved at this early period of life, and subsequent hard application to the law under George Wythe's tutorship, that the youthful Jefferson dedicated himself to study and the pursuit of truth. The remainder of his life presents continuous growth and self-instruction, begun untrammelled under the wholesome and radical influence of the frontier and carried far afield through the realms of European thinkers and the ungentle but edifying experience of practical politics. A man of timorous physical nature, though of robust physique, he possessed a bold mental activity, and preserved to the end, both in the empyrean of his philosophy and in the realities of his political life in office, the rarely ruffled temperament of the doctrinaire.

This student of human nature and human history was called upon early to apply his theories to facts. Soon after he had been accepted at the bar and had established a living practice, the Revolution (as he later said) "shut up the Courts of Justice." Jefferson's qualities in 1768 secured his election to the Virginia House of Burgesses, where he served until the dissolution of that assembly for the last time by the British Government in 1774. He was a member—in fact he was chiefly responsible for the creation of this body—of the Virginia Committee of Correspondence in 1773; then of the Non-Importation Association of 1774, of the local committee of public safety, of the Virginia Convention, and in 1775 of the Continental Congress. Throughout all these rushing years it was the mind and pen of young Jefferson—he was thirty-three years old when he drafted the Declaration of Independence—which clarified and crystallized, particularly in the southern states, the Ameri-

can argument against Great Britain, which looked ahead to the possibility of independence, which finally couched in immortal language the charter of American freedom accepted by the representatives of all the colonies on July 4, 1776. On January 14, 1784, Jefferson, as a Member of Congress, drafted the resolution ratifying and proclaiming the definitive treaty of peace with Great Britain, thus setting the seal of international sanction on the declaration which it had been his privilege to pen seven years before. He had served meanwhile, 1780 and 1781, two terms as Governor of Virginia.

Before and after his resignation from the governorship of Virginia, Jefferson had been importuned by Congress to serve abroad, but had refused because of critical domestic obligations. He had been appointed, during the later peace negotiations, to the post of one of the commission plenipotentiary at Paris, but news of the signing of a treaty arrived before his vessel got out of Delaware River ice. This appointment in 1782 was acceptable to him in that it offered an avenue of surcease from the crushing blows which the loss of his wife, and before that of several children in infancy, had dealt. In 1784 he accepted with satisfaction service on the commission created for the purpose of negotiating treaties of commerce with European powers. This commission sat at Paris. After the retirement of Franklin, Jefferson became the American minister to France, from 1785 until 1789, when he returned for a visit to his native country.

Jefferson went to Paris friendly to France and distrustful of England. His appointment was a matter of gratulation to the French Government, which already had been informed that probably Jefferson would be-

come Franklin's successor. Luzerne, the minister of Louis XVI at Philadelphia, wrote to Vergennes, the Foreign Minister at Versailles, this pen-picture of the new commissioner:

“He has been Governor of Virginia: he left that office with the reputation of enlightenment and integrity and of an excellent citizen, but incapable of holding the helm during stormy weather [Benedict Arnold's invasion]: he passionately loves the arts and sciences and cultivates them with some success. He is full of honor and sincerity and loves his country greatly, but is too philosophic and tranquil to hate or love any other nation unless it is for the interest of the United States to do so. He has a principle that it is for the happiness and welfare of the United States to hold itself as much aloof from England as a peaceful state of affairs permits, that as a consequence of this system it becomes them to attach themselves particularly to France, even that Congress ought as quickly as possible to direct the affection of the people toward us in order to balance the penchant and numerous causes continually attracting them toward England.”

Luzerne was further impressed by the “honorable” attitude which Jefferson displayed on the question of the American money debt due to France.¹

Before his departure Jefferson took great pains by reading and travel along the coast to inform himself on commercial affairs, and he became a useful and active member of the commission, which negotiated our first treaty with Prussia, in 1785. The commission also held negotiations with Austria and Portugal on the same sub-

ject, which failed because of the uncertain conditions of the government of the United States under the Articles of Confederation. In 1785 Congress finally granted the aged Franklin's repeatedly solicited recall. Jefferson succeeded as regular minister to the Court of Versailles.

At the start he was lucky enough to have an opportunity to make by a skilful retort a favourable impression at his new post. His own report of this much-related incident is the only one I have found:

"You replace Doctor Franklin, I hear," observed Vergennes, at Jefferson's reception.

"I succeed him," answered Jefferson. "Nobody could replace him."

Jefferson's diplomacy in Paris had to deal with no critical matters. The most serious affair which he touched was that of negotiation not with France but with the representatives of the Barbary states for the release of captured American sailors enslaved by those corsairs. On this he conferred with John Adams, American Minister in London. Both agreed that a navy was the only thing which could make these pirate governments respect our flag, but Congress then had neither navy nor money to build one. Jefferson was obliged to pursue humiliating and unsuccessful efforts—unsuccessful because his Government could not pay enough—to ransom back his fellow countrymen. With France his negotiations concerned chiefly efforts to secure preferential treatment for American commerce, for which he did win a few concessions. He also brought to a close the long negotiations for a consular convention, finally signed in November, 1788, the first treaty ratified by the United States Senate.

From the point of view of his later career as Secretary

of State, Jefferson's sojourn in France interests us not so much because of the subjects of negotiation with which he had to deal, but because of the impressions which France, and Europe, made on him, and the notions about European international relations that he brought home. Certain convictions formed during these years became the basis of much of his foreign policy as Secretary of State and as President. Jefferson reveled in his unofficial social, literary, philosophical, scientific, artistic and political contacts in Paris—Virginia offered nothing like it for a man of his cultivation. This enjoyment did not blind him to the lot of the common man under the Ancient Regime, a condition which made him a more passionate American than ever. The oppression of the mass of mankind which he witnessed in Europe caused him to look back across the Atlantic with ever fonder appreciation of the felicities of American life. These he believed to be safeguarded by democracy and by separation from Europe. Social amenities and the intellectual refinements of the French capital never wooed his soul's allegiance away from Virginia, nor from the free, new republic for whose destiny he laboured.

The general European international situation also impressed itself profoundly on Jefferson's mind and he drew from it significant conclusions. Though much of his time was spent closeted with a coterie of philosophical radicals intellectually and actually on the eve of the French Revolution, he did not fail to measure the sensitive European balance of power. Repeated diplomatic crises in Europe during his sojourn in France indicated to him that a general war might be expected at almost any time, inevitably very soon. A few weeks after his

arrival in France, in 1784, war seemed likely because of the attempt of the Emperor of Austria to navigate the Scheldt River between Dutch banks, even as the United States then wished to navigate the Mississippi between exclusively Spanish banks. France stood ready to protect the Dutch against aggression from Austria. "This war," Jefferson was quick to surmise in a letter to his friend Monroe, "may possibly renew that disposition in the powers of Europe to treat with us on liberal principles, a disposition which blazed out with enthusiasm on the conclusion of peace. . . . I think when it shall become certain that war is to take place, that those nations at least who are engaged in it will be glad to ensure our neutrality and friendly dispositions by a just treaty."² This idea strengthened in his mind as his experience in Europe lengthened. The threat of war over the Scheldt gave way the following year to general anxiety concerning the proposed exchange by the Emperor, of his Belgian Netherlands for the dominions of the Elector of Bavaria, a matter which kept Europe on tenterhooks for many months. Again in 1787 a war which would involve France and England seemed imminent over the Prussian intervention to suppress a revolt in the Netherlands. "Should this war take place, as is quite probable," reflected Jefferson, "and should it be as general as it threatens to be, our neutrality must be attended with great advantages. Whether of a nature to improve our morals or our happiness is another question." A British ultimatum to France prevented, rather than caused, a war on that occasion.

After this affair other crises arose in succession. Rumours of war continually alarmed the chancelleries of Europe.

“The several powers are, little by little, taking the position of war, without any immediate intention of waging it. . . . That the present ill-humour will finally end in war is doubted by nobody,” wrote Jefferson to Jay in May, 1788. In the summer of that year a combination of the Eastern Question and the Baltic situation seemed to the American Minister at Paris likely to drag England into a general war. No sooner had this passed off than mysterious moves reported from the Spanish fleet excited his suspicions of a forthcoming war between England and Spain. “The Court of Madrid,” he wrote to Carmichael at that city, “may suppose we could not see this with an unwilling eye. This may be true as to the uninformed part of our people; but those who look into futurity farther than the present moment or age, and who combine well what is, with what is to be, must see that our interests well understood, and our wishes are that Spain shall (not forever, but very long) retain her possessions in that quarter and that her views and ours, in a good degree, and for a long time, concur.”³

Jefferson formed while in Europe a settled conviction that sooner or later Europe’s quarrels would be sure to be America’s advantage, that as long as the European powers were not embarrassed at home, and had energy for aggressive policies in North America, they would never be tender of American independence unless it suited their interests to be so, as it did that of France; but that if the uncertain state of European international relations should involve either Great Britain or Spain, the aggressive colonial back-door neighbours of this country, in war between themselves or in serious diplomatic difficulties they would pay well to secure the friendship

of the United States, in order to insure the safety of their adjacent territory in America. An implicit trust in this, rather than in military preparedness—though at this time Jefferson recommended a navy as a protective force and a unionizing instrument not capable of civil tyranny—was to be characteristic of his long career in handling the foreign relations of the United States. It was to the imminent likelihood of some war in Europe in which Spain or Great Britain, our potential enemies and dangerous neighbours, might be seriously jeopardized at home that Jefferson looked, on becoming Secretary of State, for the solution of issues with those monarchies. Out of future chapters of circumstances, the precise nature of which he could not foresee, but to the general character of which he confidently trusted, he awaited the opportune moment when the United States, a nation of no appreciable organized military or naval power, could by a threat of potential strength and by astute diplomacy force from Spain, harassed by troubles in Europe, the free navigation of the Mississippi River and the recognition of the southern United States boundary of 31 degrees north latitude along the frontier of the newly conquered Spanish province of West Florida; could compel Great Britain to get her troops out of our northern territory and admit our commerce into her remaining American possessions.

Ideas of this kind may seem to the reader of today an artless and childlike policy for a diplomat of the eighteenth century, but after reflecting on the expansion of the United States during the remainder of Jefferson's long life one cannot but conclude that his shrewd confidence was abundantly warranted. Faith in his surmises

was justified by the advent of the wars of the French Revolution, the vast scope or even the proximate arrival of which neither he nor any other man then living could have foretold six months before their outbreak. Those wars produced an alignment of powers which, though not precisely foreseen by Jefferson, nevertheless redounded to America's advantage.

When Jefferson took up his office as Secretary of State it was with these two powers, Great Britain and Spain, that the chief tasks of American diplomacy were identified. The issues with them were hang-overs from the old government under the Articles of Confederation. The reader has already observed the lack of success and the impotency with which John Jay, as Secretary for Foreign Affairs of the old Continental Congress, had grappled with them. The government which stood back of him was too feeble to command the respect of any foreign nation. In addition, Jefferson had the duty of carrying forward the already established American foreign policy ⁴ of promoting wherever possible the trading interests of the new republic with all the nations of the world. It was precisely with these two powers, Great Britain and Spain, that lay the most expansive possibilities of commerce for American merchants and navigators. But it was with these two powers that the old government and Jefferson's predecessor had been able to do nothing. How long would it be before the European convulsions anticipated by Jefferson, would appear to assist him in solving the chief international difficulties of the United States? Before answering this, it may be well to describe these problems of foreign affairs which confronted Washington's first Administration.

When the first President took over the helm of government from the unsteady authority of the Continental Congress, he found the territory of the United States still menaced by foreign control. Of the area included within the boundaries recognized by the treaty of peace as belonging to the United States, over one-half was in 1789 either under the actual occupation or the practical control of foreign nations. Along the northern boundary British garrisons still occupied the posts which dominated the water navigation of the St. Lawrence-Great Lakes system and controlled the approaches from Canada to the United States by way of Lake Champlain and across the St. Lawrence or by the narrow isthmuses and peninsulas which separate the several lakes above that river.⁵ British officials, holding commissions in the thoroughly organized British Indian department, roamed over the territory between the Ohio and the Great Lakes. They tutored the Indians to believe that the lands which they occupied belonged to them in sovereign right, despite the fact that Great Britain in the treaty of peace with the United States had acknowledged those very lands, with no mention of Indians, to be within the territory of the United States. As we have seen, in the previous volume, they advised the Indians to stand firm against the efforts of the United States Government to extend its jurisdiction over them, and they furnished surreptitiously arms and ammunition, as well as other supplies, to the natives, which enabled them to resist the small armies with which the federal government was weakly endeavouring to bring law and order into the backwoods. At the same time intrigues with the separatist parties in Kentucky and Vermont were covertly pursued.

As the western territory of the United States north of the Ohio was menaced by Great Britain, so was the western territory south of that river threatened by the shadow of Spanish power. With more justification Spanish military forces garrisoned forts north of the line of 31° north latitude, which Great Britain had acknowledged as the southern boundary of the United States. At Natchez, on the east bank of the Mississippi, a Spanish fort still supported Spain's claim that her territory extended, by right of conquest from Great Britain, as far north as the Ohio River and its tributary, the Tennessee. Provided the United States would have accepted, in the Jay-Gardoqui negotiations, the cloture of the Mississippi, Spain had been willing to relinquish all but a corridor of territory on the east bank of the river, sufficient to unite New Orleans and Natchez, but insisted, in lack of any such settlement, on claiming everything south of the Ohio and west of the line of the Kentucky and Flint. Within this region, comprising the present states of Mississippi and Alabama, much of Georgia and Tennessee, and some of Kentucky, Spain pursued a policy similar to that of the British in the North. Her colonial governors and their agents bound the Indian tribes (Creeks, Chocktaws and Chickasaws) into treaties acknowledging Spanish protection and undertaking mutual defense guaranties, furnished them almost openly with arms and ammunition to use in their wars against the American western settlers, taught them to stiffen their resistance against the efforts of the United States to pacify them, advised them to repudiate similar treaties which they formed with the Continental Congress. Here, too, the Indians served as a natural barrier

between Spain's meager frontier garrisons and her Florida and Louisiana colonies. By virtue of Spanish occupation of this southwest territory and operations among the Indians, Spanish traders (Scotchmen, who had been British subjects before 1763) were able at least to compete for, though never actually to control, the fur trade of the Southwest.

Spain also had intrigued, even more violently and much more tangibly than Great Britain, with separatist leaders in the West, particularly in the Kentucky and Tennessee regions—leaders who fortunately for the Congress did not at all represent the loyal body of western settlers—to bring them under her allegiance and protection. Spain wanted to hold the east bank of the Mississippi as a means of keeping the river closed. She wanted to keep the river closed in order to keep the Americans out of Louisiana. Louisiana itself served in Spanish policy as a great buffer covering all her American possessions in Mexico and south of it from the aggression of the English-speaking, land-hungry peoples to the north. Even that early the expression of the Colossus of the North had been coined in the Spanish dispatches.

A sinister symmetry thus characterized both British and Spanish policy toward the American hinterlands. That great area of settlement, the home of future millions of American people, from which the territorial expansion of this nation was to get its future impulsion, lay compassed about by the colonial forces of these two great European powers, with whose diplomacy the government of the Confederation had been powerless to cope. The greatest problem presented to Washington in the field of foreign affairs was the redemption of the

territorial integrity of the United States. This was what confronted Thomas Jefferson when he took up his work as Secretary of State.

There was also the matter of commerce.

One of the great rewards which radical leaders of the Revolution had pointed to in their arguments for the expedience of separation from England was that, unshackled from the British Navigation Laws, Americans could trade freely and with great profit with all the world. But independence proved no open sesame to free trade. Spain was no more liberal in matters of commerce to the independent United States than she had been when they were British colonies. Americans would fain enter the ports of Spain's colonial possessions, as military expediency had allowed them to do in certain instances during the Revolution. Spain prohibited this.

Treaties of commerce were negotiated with certain of the powers of Europe, as has been noted,⁶ but the main channel of American commerce continued to be with England. The British Government controlled our commerce according to its own liking—that is, it let in freely what was profitable for British traders, and it excluded what it was its interest to shut out; consequently American ships were not allowed to trade with any of the remaining possessions of Great Britain in North America, notably the British West Indies and Canada.

In vivid contrast with the attitude of Great Britain and Spain respectively toward the United States, appeared that of our ally. If it is true that France had observed with some complacency the impotency of the Union from 1783 to 1789—even though that feebleness of government meant less and less chance of collecting

the debt of 35,000,000 livres which Congress had borrowed during the Revolution—if it is evident that France never reckoned on any effective aid from the American alliance in case of another war with Great Britain,⁷ it is also apparent that that power continued to stand in close and friendly relationship to the United States. The enthusiasm of the political philosophers now on the threshold of the great revolution had not ceased to worship extravagantly at the shrine of American republican institutions, and, as the years of peace lengthened, more cultural affinity was developing between the two peoples.⁸ The Franco-American alliance had passed the honeymoon stage, but there was every indication that the two countries had settled down to a period of steadfast cordiality. This was reflected in the peculiar favours which American vessels received in the ports of continental France. American whale oil was admitted on an equality with French whale oil, either in American or French bottoms, and seven-twelfths of our product was disposed of in that way; American fish were allowed to come into France free in American vessels—the French market, in fact, paid hard cash for two-thirds of the whole yield of American cod fisheries. In the French West Indies American ships were admitted with rice, salt fish and salt meat, at nominal duties, while frequent suspensions of generally prohibited farinaceous imports added to the volume of our exports to those islands.⁹

It was to the interest of France to preserve and cherish American friendship as a counterpoise to Great Britain¹⁰ and to thwart any sanguine British hopes at a confederative reconciliation. Jefferson felt that it was also for American interest to cultivate France for the same reason.

He remembered that France had helped to win American independence. He observed that France had no territorial interests or ambitions in North America. He felt a religious sympathy for the growing radicalism in that monarchy. In his mind there was no question where the friendship of the United States ought to lie. Writing from Paris during the early days of the Estates General in 1789, and commenting on the friendly dispositions of that body toward the United States, Jefferson urged Madison that particular favours be shown to France (presumably in matters of tariff and tonnage legislation) as against Great Britain: "When of two nations, the one has engaged herself in a ruinous war for us, has spent her blood and money to save us, has opened her bosom to us in peace, and received us almost on the footing of her own citizens, while the other has moved heaven, earth and hell to exterminate us in war, has insulted us in all her councils in peace, shut her doors to us in every part where her interest would admit it, libelled us in foreign nations, endeavored to poison them against the reception of our most precious commodities; to place these two nations on a footing [of equality], is to give a great deal more to the one than to the other if the maxim be true that to make unequal quantities equal you must add more to the one than to the other. To say in excuse that gratitude is never to enter into the motives of national conduct, is to revive a principle which has been buried for centuries with its kindred principles of the lawfulness of assassination, poison, perjury, etc."¹¹

It will be our task first to consider Jefferson's British negotiation. When the first Secretary of State took up his work there was no British minister in Philadelphia.

There never had been. George III had refused, so contemptuous had he been of the Government of the United States, to exchange diplomatic representatives when John Adams had been sent to his court in 1785. One of President Washington's first steps had been privately to sound out the British Government as to whether an exchange of ministers would be desirable now that the new American régime was inaugurated. This was taken through the celebrated Morris mission, the details of which were turned over to Jefferson when he took office.

CHAPTER II

JEFFERSON AND GREAT BRITAIN

GOUVERNEUR MORRIS, sprightly Federalist, brilliant raconteur, observer of the foibles of human nature, literary furbisher of the Constitution of the United States, went to France in 1788 to sell Virginia tobacco. He remained in Europe thereafter for twelve interesting years. After fulfilling the mission about to be described, he served as United States minister in France, 1792-1794, until the Jacobins requested his recall. He then travelled over Europe during the wars of the French Revolution, sojourning at the several capitals of the monarchs allied against France, making acute if not wholly accurate diagnoses of the ailments of men and measures of state, and writing for the several European foreign ministers political prescriptions. Even though his diary was zealously expurgated by a prudent and painstaking widow, it entertains the reader with racy gallantries and shows—what other sources confirm—that his political advice was at least respectfully listened to though rarely accepted by those whose duty it was to counsel the potentates of Europe in their dealings one with another. For a while, between 1795 and 1799, he regularly furnished the British Foreign Office with digests of his observations. The work which President Washington now confided to him afforded a first introduction to the diplomatic personages and the courts of Europe, those purlieus which later he so loved to frequent.

Washington himself was the first to resort to that informal procedure which so frequently has been employed by American Presidents from the days of Gouverneur Morris down to the times of Colonel Edward M. House—the personal representative of the President. The first President had been in office but a few months when he decided, upon the advice of the Secretary of the Treasury, Alexander Hamilton, and Chief Justice John Jay, to approach the British Government informally. Gouverneur Morris was selected for this purpose because of his well-known political perspicacity and because he was already conveniently in France. The President instructed him to cross the channel and find out what the attitude of the British Ministry was toward the new political régime in the United States, particularly what Great Britain now proposed to do about the occupied posts, the negotiation of a treaty of commerce and the matter of an exchange of ministers.

Morris readily enough got in contact with the Duke of Leeds, then Foreign Minister, and with the Prime Minister, William Pitt, in the spring and summer of 1790. He found them full of amiable professions of friendship but nothing else. They were desirous of a “real and *bona fide* system of commercial intercourse,” but would take no step toward negotiating an actual treaty of commerce, even though Morris indicated that the new federal government was now adequately endowed to make and to execute such treaties. As to evacuating the frontier posts, Pitt replied by intimating that before that could be done he would have to have security for the payment, according to the guaranty of the peace treaty, of pre-revolutionary debts due to British creditors. The

Prime Minister asked Morris if he had powers to treat on those subjects. Morris, who of course had none, retorted that the United States could not appoint a minister to London until Great Britain should send one to Philadelphia. Pitt asked if we would send one if England did. Morris could say no more than that he could "almost promise" that we would.

In his several informal interviews Morris noted that the warmth with which he was received fluctuated according to the possibility of the outbreak of war between Great Britain and Spain, which was imminent throughout the summer over the Nootka Sound question.¹² This was indeed the case. When war seemed likely the Ministry dallied a little more pleasantly with Morris, for there was some danger that the United States might take steps, while England was busy with Spain, to occupy its own posts by military force. They not only played with Morris, but they beguiled Levi Allen, then in London seeking British recognition for the "independent sovereign" state of Vermont, in the shape of a treaty of commerce. The Ministry was advised by the Board of Trade that in case of a Spanish war, Vermont's friendship would be a considerable acquisition of strength, at any rate that Vermont ought not to be "dependent on the Government of the United States or on any other foreign country."

Discerning the real attitude of the British, Morris raised his tone as the Nootka Crisis developed. "We do not think it worth while to go to war with you for the posts," he says he told Pitt, "but we know our rights and will avail ourselves of them when time and circumstances permit." As soon as the Nootka affair blew over

the Ministry ceased to hold converse with this truculent New Yorker. Morris reported to Washington that England showed no signs of desiring to alter the existing unsatisfactory condition of Anglo-American affairs, so acceptable to herself, so unsatisfactory to the United States.

Jefferson came into office after the instructions to Morris had been dispatched. He assumed charge of the informal negotiation and soon became convinced that nothing would result from it as long as England remained at peace in Europe. In December he submitted a report for the President to present to Congress on the subject, attaching to it Morris's dispatches up to September 18, 1790, and concluding that Great Britain had no intention of giving up the posts, that if the suggestions, made to Morris, of indemnification for unpaid debts, were met, the sum demanded would be placed high enough to ensure a disagreement in order to preserve a pretext for holding the posts.

Jefferson did not time this report to be presented at a moment calculated to raise the wrath of Congress against England but it could not have appeared at a time more opportune for that purpose. When the President sent it in, Congress was in an irritated mood with things British. England still fed on American commerce. With the return of peace business had turned back into its accustomed channels, and it was still occupying them. The bonds of common language, common customs, common literature, the intangible and non-political allegiance to a cultural empire "wide as Shakespeare's soul" and the more practical advantages of long-term credits had secured for England control of American trade on her own terms.

No treaty of commerce seemed necessary. All England had to do was to sit still. Our first national customs figures showed that more than nine-tenths of American imports came from England, over half of these in British ships. Parliament coolly had shut up the West Indies and Canadian ports to American ships in 1784 and Englishmen continued to monopolize American commerce without fear of retaliation—until the first Congress met under the new Constitution. One of the first things considered by that Congress was the subject of tariffs on imports and tonnage duties on ships docking in American harbours. Laws providing such were passed in 1789 and 1790, primarily for the purpose of revenue to support the expenses of the Government and to pay the interest and slowly amortize the new national bonds created by Alexander Hamilton's brilliant funding of the public debt. Practically all the government revenue came from this source. The indispensability of these laws, and of the trade in English imports on which the American revenue was collected, to the new credit produced by the Hamiltonian fiscal plan, is thus obvious at a glance.

Jefferson, and all other diplomatists who had had to deal with Great Britain, felt that the only way to make that government extend advantages to American ships and trade was to retaliate against British vessels and commerce by navigation laws of our own making. Now for the first time this was constitutionally possible. Jefferson used all his private influence to secure the passage of laws specifically discriminating against British commerce and British ships by laying a higher tariff on goods imported from England and a higher tonnage

duty on British ships in American ports. Jefferson's friend and protégé, James Madison, introduced bills in the House of Representatives for this purpose when the first tariff and tonnage acts were passed. The tonnage discrimination passed the House of Representatives in the thinly disguised form of a discrimination between the ships of countries having treaties of commerce with the United States and those not having such; but not the tariff proposals, levying higher duties on British goods. The tonnage measure was thrown out by the Senate. As finally passed, the laws afforded a ten per cent reduction in duties on goods imported in American bottoms, and a marked reduction in tonnage duties for American ships as against all foreign ships without distinction. The defeat of the discrimination measures was the work of the friends and followers of Hamilton, who believed that such would lead to a war of tariffs which would demoralize American trade with England and thus dry up the revenue on which the new government and its credit were based. This would have been nothing less than the end of that remarkable new political experiment, the Constitution of the United States, and of the new nationality which was assuming solidity under it.

A political issue of major importance developed out of this question, an issue which soon began to divide Congress into two parties, one which followed the lead of Jefferson and Madison in favour of such discrimination, the other which feared with Hamilton that the policy was fatal. The first soon began to observe that the Hamiltonians were endeavouring, as Madison expressed it, to "administration" the Constitution into a stronger central government, perhaps in a moment of crisis into

a monarchy. That Jefferson sincerely dreaded this last is a fact. The Hamiltonians feared that a strict interpretation of the Constitution would result in too weak a government to make a nation out of the several states. Developing the issue of discrimination or not against British commerce, these two political groups soon identified themselves with contrary schools of interpretation of the Constitution and with contrary principles as to the part which the average man ought to play in politics. Thus the Federalist and the Republican-Democratic parties emerged, with their respective great leaders, Hamilton and Jefferson, who were soon pitted against each other on nearly every important subject that was discussed in Washington's Cabinet. Thus, too, originated that fundamental party division which has been at the basis of American politics ever since.

Hamilton successfully used all his powerful influence to defeat this discriminating legislation which Jefferson and Madison advocated. The milder laws actually passed, in 1789 and 1790, which gave a ten per cent reduction in duty on goods imported in American ships and allowed a cheaper tonnage duty to ships flying the stars and stripes, started a gradual transfer of the carriage of Anglo-American commerce from British to American bottoms, thus proving at once the wisdom and efficacy of this our first shipping policy.

It was these very tariff and tonnage laws, and the threats in the debates on them of more specific discrimination against British goods which induced the British Ministry to accredit a minister to the United States. Intermittently since 1787 an unaccredited observer had been maintained without powers, at the seat of

government in the United States, at first by the Governor-General of Canada, Lord Dorchester, later by the Foreign Office itself. He was one of Dorchester's aides-de-camp, a Major Beckwith, who had purposely cultivated an intimacy with Hamilton, whom he soon discovered to be one of "the party of the British interest" in the United States. Beckwith had been quick to report to the new Foreign Minister at Downing Street, Lord Grenville, the nature of this new American tariff legislation. In 1789 while on a visit to London he had held long conferences with Grenville, then Home Secretary, who sent him back to New York to continue his observations.

Beckwith was in Philadelphia when Jefferson's report on the failure of the Morris mission was delivered to Congress in December, 1790. He saw that it immediately produced a ferment. Those who had argued that the only way to bring the British to their senses, and to secure commercial privileges from them, was by commercial discrimination against England, now pointed to the Morris negotiations as proof of the soundness of their position. The report was referred to a committee which brought in a bill precisely in imitation of the celebrated British Navigation Laws, prohibiting importation into the United States of goods not the growth, manufacture or produce of the country under whose flag they were shipped, whenever such country refused (as did Great Britain in the West Indies) to allow importation of American goods in American bottoms. A law like this threatened England's carrying trade to America. The bill reached a second reading and was referred for debate to a committee of the whole, February 22, 1791. Beckwith became thoroughly alarmed. After conferences with Hamilton,

he wrote to Whitehall that if no steps were taken to send a minister to the United States before the next session of Congress such laws undoubtedly would be passed. The Ministry already had seen this. Following an elaborate report of the Board of Trade on American commerce—the United States was now rapidly becoming Great Britain's biggest foreign customer—it was decided to accredit a minister to the President at Philadelphia. The decision was conveyed to Hamilton and to Federalist leaders through private channels in the spring of 1791, just in the nick of time to enable those gentlemen to head off the undesirable legislation.

During these months before the arrival of a regular minister the observer Beckwith had formed an intimacy with Hamilton. Jefferson very properly had kept aloof from Beckwith. He could not hold contact with an unaccredited representative. But Hamilton kept Beckwith pretty well posted on what the Administration's policy was toward Great Britain. He actually told him that when there was anything important to be conveyed from the British Ministry to the President, it would be of advantage to both countries to transmit it informally through him, Hamilton, because of the possible predilections of the Secretary of State "elsewhere" (i.e. for France).

This outrageous interference by Hamilton was to be eventually one of the reasons for Jefferson's resignation as Secretary of State. Even now he was bitterly complaining to Washington of the "corrupt squadron" which was nourishing itself on the public debt, and indicating his desire to retire at the end of the President's first four-year term. As yet he was not wholly aware of the extent of

Hamilton's interference with the Department of State. The first British minister, George Hammond, a young man of twenty-seven years, arrived in November, 1791. Previously placed *en rapport* by Beckwith's reports, Hammond was quick to continue and even to augment this intimacy with Hamilton, and it was the Secretary of the Treasury whom the British minister chose as his real source of contact with the American Government, rather than the official channel of communication, the Secretary of State, with whom he went through only the motions of formal diplomacy.

Jefferson soon found that Hammond had no powers to negotiate a treaty of commerce or any other kind of treaty. All that he was empowered to do was to *discuss* the various issues still outstanding. The Englishman's actual instructions show us that in these discussions he was to couple any evacuation of the posts with an arrangement not only to secure payment of pre-war debts to British creditors but to mediate between the hostile western Indians and the United States Government on the basis of setting up a "neutral, Indian, barrier state" in the territory north of the Ohio and east of the Mississippi, to include if possible a strip along the northern border of New York state as far as the forts at the outlet of Lake Champlain. This was a plan, which even Hamilton indignantly repudiated, and which Jefferson politely parried, for creating a sphere of British influence, indeed an actual protectorate over the great north-western territory.

Jefferson was willing to accept a chance merely to *discuss* the question of posts, debts, and boundaries, as well as that of negroes carried off by British armies in

violation of the treaty of peace. So he passed over the fact that Hammond had no powers for a treaty and asked to be informed why Great Britain was not relinquishing the posts according to the terms of the treaty. Meanwhile he held up another report which he had prepared for Congress, comparing in graphic manner the commercial favours extended to the United States by France with the prohibitions of the British navigation system.

Hammond proceeded to formulate what he considered a tremendous and unanswerable indictment of the American position. With the help of the British consul at Philadelphia he collected all the instances which he could find of individual states placing obstacles in the way of the payment of debts to British creditors. There is no doubt but that there were numerous instances of this, and some of treatment of Tories, which were violations of the treaty of peace. Congress before 1789 had been unable to execute the obligations of that treaty. It was not because of any secret order sent out to the several states by Congress on the day before the treaty had been proclaimed. This was what Great Britain had done, we remember from the preceding volume, in the case of the posts. Congress in vain had enjoined the states to fulfill the terms of the treaty.

With such material at his disposal Hammond should have been able to construct a case which would have been most embarrassing to the Secretary of State. He failed to make the most of his opportunity. He drew up his case in the form of general accusations against the United States, without taking the pains to point out in the text of it the specific instances in which such alleged

violations of the treaty occurred. For this he trusted to the list of state laws which he enumerated by title and chapter in a neat appendix at the end of his note, without in any instance specifically documenting them to the charges in his text.

Jefferson at the outset was thus placed in a position of great advantage in replying to Hammond's note. The long rejoinder which he made is his greatest diplomatic, note, and indeed one of the cleverest arguments in the history of American diplomacy. Nevertheless Jefferson had what must then have seemed a bad case to deal with. That there had been American violations of the treaty he very well knew, and he only suspected that the real reason why the British had broken the treaty on their side was not as retaliation or means of reprisal. He did not, of course, have open to him the archives of the British Colonial Office, as the student does in these days of cordial Anglo-American understanding of the year 1926. The agile Secretary of State had to make the best of what would have struck many contemporary observers as a difficult position. He must have thanked his lucky star that Hammond had eased his way.

Hammond had charged that various states had confiscated property of Loyalists since the peace, in contravention of the treaty. Jefferson carefully went through all the acts, titles of which were grouped in the appendix to Hammond's note, and showed that in not one instance did these acts concern property not already confiscated as an act of war during actual hostilities. Hammond complained that Congress had not loyally carried out the article requiring that it recommend to the several states that property taken from Loyalists during the

war be restored. Jefferson easily demonstrated that Congress had gone through the formality of making the recommendation, that the peace negotiators and their principals at the time of the treaty's signature perfectly realized that such a "recommendation" was likely to prove an empty formula, that in fact Parliament in anticipation of this had appropriated funds for the satisfaction of the Loyalists. Actually, Jefferson showed that some of the states had complied with the recommendations of Congress though they had not been under any obligation to do so. Hammond had bitterly charged the states with putting obstacles in the way of the collection of debts guaranteed by the treaty to British creditors. This should have been his strongest point. Jefferson answered that the states had done this only after Great Britain herself had violated the treaty, within a few days of its ratification, by carrying off negro slaves in violation of Article VII; that the correspondence of American officials with those of the Canadian government revealed that as late as July 13, 1783, no orders had been received for evacuating the posts, whereas news of signature of the preliminaries of peace had been received by British commanders on April 15. Since no orders had been received, Jefferson assumed that none had been given, that thus from the very beginning Great Britain had violated the treaty, which stipulated for evacuation "with all convenient speed" following the cessation of hostilities. The opening of the British archives nearly a hundred years later showed that Jefferson was absolutely right.

Thus did the Secretary dispose of the principal issues raised by Hammond's memorial. Jefferson's note itself,

dated May 29, 1792, contains about 17,000 words, exclusive of copious footnotes and a formidable appendix of corroborative material. That is, it was nearly as long as this sketch of Jefferson in the volume now in the reader's hands. The text was divided lucidly into numbered sections, and each statement of importance was documented clearly and carefully. Despite its length the note is devoid of verbosity. It was composed, accompanied by the labour of the arduous research which it necessitated, in seven weeks, while Jefferson was carrying on much other business of the Department, notably the negotiations with Spain. It will remain forever a monument to the man's capacity for work, to his infinite pains and to his legal acumen, a model of a defensive state paper.

Young Mr. Hammond, who was then in the midst of a very pleasant and wholly successful courtship of the beautiful daughter of a substantial Philadelphia merchant, had boasted to the British Foreign Minister, Lord Grenville, that his memorial to Jefferson constituted a body of proof "so complete and substantial as to preclude the probability of cavil and contradiction" on the part of the American Government. Jefferson's rejoinder came to him with all the force of a stunning shock.

Crushing as was the logic of Jefferson, when applied to Hammond's mediocre statement of the British case, its full force was never felt. Hammond immediately ran to Hamilton. He complained to the Secretary of the Treasury of this "extraordinary performance" of the Secretary of State. Hamilton in turn lamented "the intemperant violence" of his colleague. We are astonished to read in

Hammond's dispatches that Hamilton told the British minister that Jefferson's note was far from being a faithful representation of the true sentiments of the Administration, that the President had had no opportunity of reading it and simply had relied on Jefferson's assurances that the other Cabinet members had agreed to it.

This was not strictly true. After writing the note Jefferson had submitted it to Hamilton for his advice and opinion, as he had also to his friend Madison, and to Randolph, Attorney-General. Hamilton had noted that much strong ground had been taken and strongly held, particularly on the recommendatory clauses and the lodging with Great Britain of the onus of prior infraction of the treaty. He believed, however, that it would be better to extenuate rather than to vindicate the action of the states on debts (actually the reader would believe that this is precisely what Jefferson had done). Jefferson had accepted a few of Hamilton's minor technical criticisms and improvements of style but left the main principles of the note unchanged. He then sent a copy of Hamilton's notes to Washington, together with a summary of his (Jefferson's) views. The President thoroughly sanctioned the position taken by the Secretary of State, particularly that charges as to recovery of debts should be vindicated rather than extenuated. Such was the President's opinion as described by Jefferson in a letter to Madison two days after the note was delivered to Hammond. There is no reason to doubt it.

Jefferson's reply to Hammond thus perfectly represented the sentiments of the Administration, excepting Hamilton. Hamilton himself had not strongly disagreed in his consideration of the matter with Jefferson. The

least that can be said of his action in repudiating the Secretary of State behind the latter's back in interviews with the British minister is that it was most reprehensible and utterly gratuitous. Of course, Hamilton's statement to Hammond destroyed the effect of the Secretary of State's official reply. All Jefferson's hard work went for nothing and the interests of the United States were injured. The British Government, notwithstanding the repeated importunities of the Secretary of State to Hammond, never answered Jefferson's rejoinder, both because in fact it was so difficult to answer and because it took for final Hamilton's private opinion. Jefferson retired from Washington's Cabinet, without the British negotiation ever having been advanced in the slightest degree.¹³ Hammond's presence in the United States, however, and the beginning of a *discussion* of issues between the two countries, served to mollify the American Congress sufficiently to fend off a recurrence of discriminatory legislation until the crisis of 1794, which brought about Jay's mission to England. Thus the British minister was measurably successful in accomplishing the real purpose of his mission—the maintenance of the commercial *status quo*. On the other hand, the strength of the new national government over which President Washington presided had commanded the respect of Great Britain sufficiently to cause an exchange of diplomatic representatives.¹⁴

CHAPTER III

JEFFERSON AND SPAIN

WE have seen how Jefferson's experience in Europe during his ministership at the court of France had taught him to rely upon the chance of war on that continent to secure for the United States a recognition of its rights and advancement of its interests. He had been in office only a few weeks when the very possibility which he had anticipated seemed about to occur. This was the famous Nootka Sound affair, already mentioned in connection with the informal mission of Gouverneur Morris to London.

This dispute arose out of the seizure by Spanish naval forces of two British trading ships at Nootka Harbor on the west coast of Vancouver Island. There is today at Nootka no permanent settlement of any kind. A salmon canning factory with its banal and odoriferous surroundings does not remind the visitor that this inlet was a hundred and fifty years ago the rendezvous of scores of ships of all nations plying the lucrative fur trade of the northwest coast to Hawaii and China. The name of the harbour now stands in history as marking the end of the most expansive claim to a monopoly over unoccupied territory which any power has ever seriously maintained.

In 1493 Pope Alexander VI set the bounds between the Spanish and Portuguese claims in the newly discovered regions by drawing a line from pole to pole down the middle of the Atlantic Ocean. By the treaty of Tor-

desillas the following year Spain and Portugal accepted the principle, changing the meridian of division to a point 370 leagues west of the Cape Verde Islands. Spain proceeded to occupy certain parts of her portion of the new world and to forbid all other nations from navigating in those waters, on the Pacific as well as on the Atlantic Coast of the two Americas. Her claim to exclusive ownership of everything in America west of the demarcation line did not stand long unchallenged. First French, then Dutch and English invaded the North American area of her preserves. The aggressive diplomacy of those powers gradually forced Spain step by step to make concessions, first into admitting the right of their ships to trade in regions of the Indies not actually occupied by Spain, finally recognizing the territorial possessions of England (1670) and of France (1701) in North America. In 1763 Spain was forced to cede Florida to Great Britain (receiving from her Bourbon family ally as "compensation" for the loss of this province the French province of Louisiana west of the Mississippi River, including the "island" of New Orleans) and to recognize the right of British log-cutters to make unfortified settlements on "the Bay of Honduras and other places within Spanish territory." The victory of Spain and France over Great Britain in 1783 won back Florida and restricted British log-cutting operations to a carefully specified small area between two rivers on the coast of what is now known as British Honduras. The British policy of contesting with Spain the unoccupied regions of the new world was halted for a few years.

If consistent efforts of the previous two centuries were any compass by which to chart its future course,

Great Britain might be expected to improve the first opportunity again to contest Spain's claims to exclusive sovereignty over American shores, other than those where British possessions already had been recognized.

Following the peace of 1783 British traders began to frequent the northwest coast of America and to engage in the profitable fur trade between that region and China, a trade which had been discovered by Captain Cook in his last voyage of exploration into the Pacific in 1774. Jefferson, we should note, had been immensely interested in the accounts of the northwest coast related to him at Paris by a Connecticut Yankee, John Ledyard, who had been with Cook. He encouraged Ledyard in the latter's plan to reach Philadelphia by way of Siberia, Nootka, and thence across the continent of North America. From that time dates Jefferson's eager interest in western exploration which later caused him to send Lewis and Clark on their epoch-making expedition to the mouth of the Columbia. In 1789, as the Administration of President Washington was taking up the operation of the federal government under the new Constitution of the United States, some of these British fur traders erected shacks on shore at Nootka Sound, built a small ship there, and were on the point of setting up a trading post. Spain's title to the Pacific coast of North America, along which her navigators had been cruising for nearly two hundred years, and which she had actually colonized up as far as San Francisco Bay, was now menaced by another British settlement like that which had given such trouble in the Bay of Honduras, and which might be expected to be the starting point of British dominion in the Pacific, and to stretch overland to Britain's new

possessions in Canada. The Viceroy of New Spain sent a naval officer who broke up the settlement, captured the two ships, and with their crews in irons took them to Mexico.

When news of this incident reached London in the spring of 1790 England already had recovered from the great shock of the peace of 1783 and the drain on her strength caused by the war of American independence. She was under the rule of the "heaven-born" Pitt, who was resolved to regain England's position. France, the traditional enemy of Great Britain and ally of Spain, was now paralyzed by the first year of the Revolution. Much to the satisfaction of British statesmen that monarchy was already what it continued to be for the next eighteen months, a vacuum in international affairs. The opportunity to destroy the last of Spain's claims to monopoly over unoccupied parts of the new world had appeared. Pitt resolved to strike while the family ally of Spain was unable to come to its aid. A stiff ultimatum went forth to Madrid, demanding immediate release of the captured ships and crews, indemnification for the outrage on British sovereignty, and, what is most important, recognition of the right of British subjects to make settlements on the unoccupied shores of North and South America. Pitt prepared for war vigorously. The issue hung unsettled until October. Spain saw that the English Prime Minister meant business, and capitulated. She recognized the right of British subjects to make settlements on the northwest coast providing they were in unoccupied regions north of Spanish settlements, that is, north of California. Less substantial rights to touch on unoccupied coasts of South America were also

granted. In one stroke Pitt retrieved the prestige of his country. No longer had the old papal grant even the shadow of authority. Without a war Great Britain had won the fruits of one. Unfortunately for Great Britain, but very fortunately for the future territorial expansion of the United States, the long train of wars in which England was involved in Europe from 1793 to 1815 prevented that power from reaping the fullest advantage of Pitt's Nootka Sound victory.

When Jefferson heard of the Nootka Crisis he thought the propitious moment had come to solve at least the Spanish question, even perhaps to put some pressure on Great Britain to relinquish the posts. Up till this time (August, 1790), Jefferson had taken no step toward settling the outstanding disputes with Spain. A special messenger was sent with dispatches for Morris in London, from which place the courier was to continue to Lisbon and Madrid, with papers for the American chargé at the Spanish capital, William Carmichael. To Morris Jefferson wrote that if the war crisis still existed upon the arrival of the instructions, he was to intimate to the Ministry that it was the desire of the United States to remain neutral, *if* Great Britain would execute the treaty fairly and make no conquest of Spanish territory adjacent to the United States. Carmichael was instructed, in case of the outbreak of war between Great Britain and Spain, to press firmly the Spanish Government for a recognition of the right of citizens of the United States to navigate the Mississippi River to the sea, and to exhibit impressively the unrest of the American settlers in the West. The Secretary of State also directed the chargé at Paris, William Short, Jefferson's old secretary of lega-

tion, to reason with France that in case of war between Spain and England, into which France might be drawn as the ally of Spain, it would be the interests of Louis XVI to diminish as much as possible the enemies of Spain. "She [Spain] cannot doubt that we will be among them if she does not yield our right to navigate the Mississippi."

The stage all set thus for the operations of Jeffersonian diplomacy shifted its scene before the courier could reach either Morris or Carmichael. Spanish acceptance of the ultimatum ended all chance of war. With it went glimmering Jefferson's chances for a settlement of the Spanish question during his term of office. Even if war had occurred Jefferson must surely have been presented with an embarrassment rather than the expected great opportunity, for had he not promised neutrality to Great Britain while at the same time threatening Spain with war? There is not the slightest reason to believe that Jefferson intended war at this time, even against Spain.

In fact the possibility of hostilities between Great Britain and Spain had thoroughly alarmed Washington and most of his advisers. Far from planning any seizure of the western posts as soon as Great Britain should be at war, the President feared that that power might undertake a conquest of Spanish Louisiana by crossing neutral American soil in the west—as Germany crossed Belgium in 1914. The British Government actually had no such intention, but so apprehensive was Washington that he submitted to his Cabinet the question of what the United States should do in case a demand for military transit should be made. Jefferson's written opinion proves that he did not contemplate war. He appreciated

the fatal results of a British conquest of Louisiana but had no resolute course of action to propose to prevent it. He advised not to answer any such demand. Then if the passage were made notwithstanding, he counseled that an issue should be kept alive until future events should decide whether it would be best to accept apologies or to use the incident as a cause for war. Again the old hope of relying on European complications to solve American difficulties. Adams, Vice President, advised refusal of passage, but not war to prevent it. So, practically, did Jay, whose opinion was also requested. Hamilton in a long state paper advised acquiescence in any such British demand, that it were better to cultivate the friendship of Great Britain than of Spain. He felt that it would be wise to go to war against Spain on the side of Great Britain and seize New Orleans, that the navigation of the Mississippi was of more importance than the possession of the northern posts.

Fortunately the nightmare never really occurred. Luckily the British Government, intimate as Beckwith was with Hamilton at that time, never heard of the undecided position of the American Cabinet on such a question.

Jefferson's next step to secure recognition by Spain of American "rights"—the candid student of today would much better use the word "interests"—was through France. He instructed Short (March 12, 1791) to beseech the interposition of France to induce Spain to recognize the American claim to navigate the Mississippi and to recognize the southern boundary of the United States at 31° north latitude, in the region of West Florida. The friendship of Lafayette and his influence at court were

also bespoken. Montmorin, now Foreign Minister at Versailles, advised the United States to let its irate citizens loose to go down the Mississippi to occupy New Orleans and secure their objects by force, something which Jefferson had raised as a dreadful apparition. But he agreed to transmit to Spain a memorandum on the subject, which Short penned at his request.

It was this memorandum which moved the Spanish Minister, Floridablanca, to resume the negotiation which had been intercepted by the return of Gardoqui after his failure to adjust matters with Jay and the Continental Congress. A little startled by the new tone of the United States as manifested in the text of Short's note, and also somewhat perplexed that France should go out of her way to deliver such a note, Floridablanca informed the United States that the King of Spain, always anxious for a settlement of issues with the United States and desirous of cultivating the greatest harmony between the two peoples, etc., etc., would be glad to receive a plenipotentiary of the United States properly qualified to negotiate a settlement of the issues of navigation and boundaries. In response to this Washington commissioned William Carmichael, already chargé at Madrid, and William Short, just promoted from Paris to be minister resident at The Hague, as joint commissioners plenipotentiary to carry out such a negotiation. Jefferson, who had already furnished each of them with his views on the Mississippi question and the southern boundary, now (March, 1792) forwarded their instructions in the shape of a memorandum which he had written for the President on the state of negotiations with Spain.

The note to Hammond described in the last chapter

is in my opinion Jefferson's greatest state paper as Secretary of State. Its merit lies in its close reasoning, its appreciation of the realities of the British position, the careful marshaling of facts and ingenious demolition of his adversary's arguments. The report to the President on the state of the Spanish negotiation, which served as instructions for Carmichael and Short and furnished them with an armory of arguments with which to assail the Spanish coat of mail, is more of a political document. In one of his illuminating footnotes to his edition of Jefferson's writings, Mr. Paul Leicester Ford aptly described this famous paper. The moot question with Spain, he says, had immense national importance because of its influence upon the whole tide of western development; because the question of the navigation of the Mississippi was the true unifying influence politically throughout the south which gave the Democratic Party its consistent support from that quarter; and, finally, because it had great personal bearing on Jefferson's future political career. Assuming that Jefferson by this time had conscious ambitions for higher political office, Mr. Ford says:

“The question [of the Mississippi] had been from its very origin sectional, being, in truth, the only one which drew a distinct line of cleavage between north and south in the period between 1783 and 1792. Jefferson, in his alienation of northern sentiment, by his attitude towards the capital, the bank, and the general financial policy of the government, had lost all apparent support from that section of the country. And in the south, Patrick Henry, Jefferson's greatest political foe, had constituted himself the champion of the almost united southern and western demand for

the freedom of the river, certain to end the political career of any aspirant to national office (as Jay's [career] had practically been [ended]) who should show any luke-warmness in pressing the claim of the right of Americans to the free use of that river. Only by realizing the importance of this matter, veiled as it was in the actual party conflicts of the day, is it possible to understand the constant recurrence of the question, till triumphantly ended in the purchase of Louisiana."

That Jefferson attached great significance to this question politically is certain. That he hoped that it might be settled before his resignation at the end of Washington's first Administration is also sure. He wrote his close friend Short, in a private letter accompanying the instructions, that he hoped Short would consider success in the object of the mission as the most important event of his life. "A former letter has apprised you of my private intentions at the close of the present federal cycle," added Jefferson. "My successor and his dispositions are unknown. The administration may change in other of its parts. It is essential that this business be completed before any idea of these things gets abroad."

He expected Short to reach Madrid in May, 1792,¹⁵ which would leave time to complete the negotiation before his own anticipated retirement from the Department of State in March, 1793.

The instructions begin by analysing the southern boundary question. Jefferson argued that Georgia's southern boundary had been fixed by the original charter, which gave a sea-to-sea grant with 31° as the boundary.

west from the Apalachicola River to the Pacific Ocean, that this westward boundary of Georgia had been reduced by the Treaty of Paris of 1763 to the Mississippi, at which time Spain had ceded Florida to Great Britain, thus making British all the territory east of the river, except the "island" of New Orleans. A few weeks later, in that same year, the King of Great Britain, "common magistrate" over the colonies and over England, by the Proclamation of 1763 divided Florida into two provinces, East and West Florida, and set the northern boundary of the latter at this same 31° north latitude. It is true, the Secretary admitted, that Spain occupied and conquered West Florida south of that line, and even placed a few garrisons in isolated places north of it; but until the Floridas had been positively ceded to her by the treaty of peace between Spain and Great Britain, of January 20, 1783, she had no more than an "inchoate" right to the enemy's territory thus occupied. Before that treaty Great Britain had signed preliminaries of peace with the United States definitely recognizing that our southern boundary should be 31° in case the Floridas should ultimately go to Spain. This Anglo-Spanish treaty ceded the Floridas to Spain (without mentioning their boundary) and in it Spain agreed to restore without compensation, all the territories conquered by her, and not included in the treaty under the head of cessions or restitutions. Assuming that the Floridas thus acquired without mention of boundaries did not extend north of 31° , Jefferson concluded that Spain was bound by its treaty with England to restore the lands within the state of Georgia to the United States as the inheritor of British sovereignty.

One cannot refrain from comment on this casuistry. By citing the treaty of 1763 and the later royal proclamation of that year as having unquestioned effect on the delineation of colonial boundaries, Jefferson admitted the right of the King of Great Britain, notwithstanding original charter grants, to alter boundaries at his own will. In 1764 the King had further changed the boundary of West Florida, though Jefferson is careful not to mention it, by extending it north to the latitude of the mouth of the Yazoo River, approximately $32^{\circ}26'$. It is enough to cite this to break down Jefferson's position by the force of his own logic. The Spanish did more than this: they refused to acknowledge any right of George III in a treaty with a third party (the United States) to fix the boundary of a province he no longer possessed, which he had actually surrendered by military capitulation. The Anglo-Spanish treaty of peace came into existence, it should also be remembered, simultaneously with the American treaty. The candid historian must acknowledge that Spain in refusing to recognize the obsolete Georgia boundary as the 1789 boundary of the United States was well within her legal rights.¹⁶

Passing to the question of the right of citizens of the United States to navigate the whole of the Mississippi, Jefferson was equally hard put to it to establish this as a *right*. Sentiment in the West and the interests of the Union, as well as Jefferson's own political future, demanded a great state paper on this point, although we can scarcely designate the resulting document as such. Jefferson nevertheless did his ingenious best.

He started by quoting the relevant article of the treaty of Paris of 1763 between the King of France and the King

of Great Britain, the latter monarch at that time being also "chief magistrate" of the American Colonies. This treaty acknowledged the right of subjects of both monarchs freely to navigate the whole river from its source to its mouth, despite the fact that the lower course of the stream ran through exclusively French domains. A few days after signing that treaty the King of France ceded the territory of Louisiana west of the Mississippi to Spain, including the "island" of New Orleans on the lower eastern bank. Spain of course inherited all the treaty obligations attached to the province. Then in the Revolutionary War Spain captured the Floridas. Though this extended Spanish territory still farther up the river on both banks, Jefferson maintained that it was not a conquest of *the river*, into which it was still possible, he averred, for the British naval forces to enter! The later citizens of the United States thus continued to possess as a right common with all British subjects the navigation of that river by virtue of the old treaty of 1763; and Great Britain specifically recognized that right in the treaty of peace of November, 1782. According to that treaty, Jefferson pointed out, Great Britain confirmed the rights of the United States to the navigation of the river, from its source to its mouth, and in January, 1783, *completed* the right of Spain to the landed territory of the Floridas, by an absolute relinquishment of her rights in it. This relinquishment could not include the navigation held by the United States in its own right, because this right existed in that new nation only, and was not in Great Britain any more.

Not satisfied to rest his case solely on treaty obligations, Jefferson maintained that citizens of the United

States had a "natural right" inherent in the geographical position of an up-river state to use the river to the sea; because the American republic held 600,000 square miles of habitable territory on the Mississippi and its branches, while the habitable dominions of Spain below the boundary of the United States did not constitute the thousandth part of that extent. It was not fair, it was not legal, he asserted, to deny to American citizens the right of innocent passage. Nay, more than that: "It is a principle that the right to a thing gives a right to the means without which it could not be used", therefore American citizens should also enjoy a right to tie up their boats to the banks, to go on shore in cases of distress and for "other necessary purposes." The commissioners were to demand a right to land and deposit merchandise for trans-shipment, on some high ground along the lower river. The "liberality" of Spain might be expected further to set apart a convenient place, to be under exclusive American jurisdiction, exempt from Spanish jurisdiction and police, as Jefferson called it, an "extraterritorial spot."¹⁷

If it were for the interest of the citizens of the United States, as Jefferson said, to enjoy those rights, it was not the interest of Spain to admit them. To Spain the chief value of the province of Louisiana was as a protective buffer for her remaining American possessions. Jefferson's suggestion of extraterritorial appurtenant rights was itself sufficient augury to Spain of how American influence and power might penetrate into Louisiana once the right to navigate the whole of the river were acknowledged. Spanish statesmen were determined to resist it. Had Jefferson's arguments not possessed such an omi-

nous portent, the advisers of Charles III might well have laughed at them. Indeed they did, when Carmichael and Short presented them at Madrid—ridiculed them as long as the European situation was safe enough to allow Spain to ignore the United States. To Jefferson's argument about the treaty of 1763, they might answer that all Florida above the "island" of New Orleans had now reverted to Spain and that Great Britain could not confirm something which, like the boundary of West Florida, she no longer possessed after the Spanish conquest; that a treaty between the United States and Great Britain had no binding force on Spain.

So far as natural rights are concerned, Jefferson's argument might appeal to the frontiersman's intellect, but not to the eighteenth century jurist. There were many rivers in Europe where subjects of riparian states could not go down to the sea through foreign territory. Spanish subjects themselves could not go down the Tagus to Lisbon. The citizens of Antwerp, much as their commerce demanded free passage out of the Scheldt, were estopped therefrom by Dutch control of the mouth of that river. The practice of modern European governments in the nineteenth and twentieth centuries has done much to widen the usage by which riparian states enjoy access to the whole river beyond their own banks, but the principle is not even yet universally established in international law. Jefferson's most forceful argument here was that of the interests of his western fellow-citizens. This could not be denied. It was always impressive to these "men of the western waters" to think of their interests as natural rights.

Short did not join Carmichael at Madrid until Febru-

ary 1, 1793, very near the time when Jefferson had expected to retire. President Washington meanwhile had persuaded his Secretary of State to stay in office a while longer; in August, 1793, Jefferson agreed to stay until the end of the year. The Spanish issue was by then far from settled. On almost the very day that Short reached Madrid, France anticipated hostilities with Great Britain by declaring war on that power. Already Austrian and Prussian troops had tried to invade the republic in order to stamp out the revolutionary program so dangerous to the principles on which rested the foundations of the institution of monarchy in Europe. *En masse* the citizens of France had risen and thrown back the monarchical armies. Then their legions occupied the Austrian Netherlands. France was mistress of the channel ports. There was danger to England that the French might open the Scheldt by force and make Antwerp a rival port to London and a highly dangerous naval base for the invasion of the island. Great Britain speedily concluded alliances with Austria and Prussia and all the smaller enemies of France. The execution of Louis XVI had been the last thing to put an end to the old Bourbon family alliance. On May 25, 1793, Spain concluded a treaty of alliance with Great Britain and became a full-fledged member of the First Coalition.

As Jefferson had expected, the general European war had come. But he had not expected to see Spain and Great Britain fighting side by side. So utterly had the French Revolution upset the conventional course of European politics that Spain was now the ally of her traditional enemy Great Britain, and the enemy of her traditional ally France. This unnatural connection com-

pletely upset Jeffersonian calculations. So impressed were Carmichael and Short by the new turn of affairs that they decided to postpone for a more opportune occasion any serious presentation of their claims, at least until they could receive from home new instructions based upon knowledge of the altered situation in Europe.

It was while awaiting these that they received further instructions from the Secretary of State to make sharp representations to Spain concerning her Indian policy in the Southwest.

The Creek Indians in 1790 had made a treaty of peace with the United States accepting the protection of that government. By a secret article, the celebrated chieftain, Alexander McGillivray, accepted an annual salary and a commission as brigadier-general. Alarmed at the success of American Indian policy, the Governor of Louisiana, the Baron de Carondelet, took steps to defend his colony against it. To him, as to other Spanish officials in Louisiana and Florida, peace between the Indian tribes and the United States meant eventual American penetration of the Indian country and the disappearance of a fine strategic buffer for the protection of a feebly fortified province; Carondelet therefore gave McGillivray a pension double that of his stipend from the United States and succeeded in secretly seducing him from American allegiance. The Spanish also occupied Walnut Hills, near the confluence of the Yazoo and the Mississippi, where the present city of Vicksburg is located, some sixty miles north of the already established Spanish fort at Natchez and about one hundred miles north of 31° north latitude. In this new position Fort Nogales was constructed and garrisoned. Another fort was established

in the upper Mobile basin. Carondelet then proceeded to negotiate treaties with the Cherokees, Choctaws, Chickasaws and Creeks, by which those several tribes united in a general confederation, signalized by a final treaty between the tribes and Spain, signed at Nogales on October 28, 1793. This treaty reaffirmed in their entirety all the old treaties of the Creeks, Choctaws, and Chickasaws, of 1784 and 1785, brought the Cherokees under Spanish protection for the first time, and declared an offensive and defensive alliance between the King of Spain and the four tribes. No action could be taken under the alliance without a previous consultation with the Spanish authorities. The tribes agreed to defend Louisiana and the Floridas against all attacks, and they invoked the good offices of Spain to secure a settlement of their boundaries with the United States, and to put an end to the difficulties which had again broken out between the United States and the Creeks and Choctaws. The Spanish governors had long been furnishing arms and ammunition to treaty tribes within the disputed territory. They were now doing it more or less openly. The Spanish agents at Philadelphia ultimately defended the right of the colonial authorities to do so. Carondelet himself was in 1793 contemplating the erection of further Spanish fortified posts in the disputed territory, and was turning with eager anticipation to a renewal of his intrigues with Wilkinson and his fellow secessionist conspirators in Kentucky.

Jefferson had already noted the presence of a Spanish agent among the Creeks and directed Carmichael and Short to protest against it. He protested to the Spanish representatives at Philadelphia, Jaudenes and

Viar, against Spain's stirring up the southwestern tribes against the United States. They denied that Spain was doing this and suggested that both governments await the result of the negotiations then supposed to be under way at Madrid, since a settlement of the boundary line would settle the question of the respective rights of each country with the Indians. Jefferson assented. After news arrived of the outbreak of war between Spain and France, and of the Anglo-Spanish alliance, the intrigues of the Spanish authorities with the southwestern Indians became more pronounced, the tone of Jaudenes and Viar more hostile. They anticipated Jefferson's further protest against Spanish Indian policy by themselves roundly denouncing the intervention of the United States with Indian tribes under Spanish protection.

The Secretary was convinced that the Spanish agents were attempting to pick a quarrel with him at a time when the international situation seemed to be propitious for it. To deprive them of that indulgence he decided to protest directly to the Court of Madrid, through the American joint commissioners there. He had not yet received their dispatches telling of the difficulty of negotiating under the altered European situation. Instead of getting instructions based on this, which they had expected, Carmichael and Short opened their dispatches in September, 1793, to find a long memoir from the Secretary of State representing the Indian situation to the Spanish Court, justifying the position of the United States with the native tribes, and sharply complaining of the unfriendly tone of the Spanish representatives¹⁸ in Philadelphia. Was the Government of the United States to understand, asked Jefferson, "that if we will not fold our arms,

and let them [the Indians] butcher us without resistance, Spain will consider it as a cause for war?" That is what Jaudenes and Viar had intimated. "This is indeed so serious an intimation that the President has thought it could no longer be treated of with subordinate characters, but that his sentiments should be conveyed to the Government of Spain itself. . . . If Spain chooses to consider our self-defense against savage butchery as a cause of war to her, we must meet her also in war, with regret, but without fear; and we shall be happier to the last moment, to repair with her, to the tribunal of peace and reason."¹⁹

The two American commissioners plenipotentiary in Madrid were thus directed to resent the Indian issue and to use it as a means of pressing a settlement of the larger disputes involved. This was their task as they interpreted the articles of the new secret Anglo-Spanish alliance, a copy of which Short had obtained, to mean that a rupture with either ally, for any reason whatever, would be made a common cause by both against a third state.

The commissioners presented the Indian question. They received scant satisfaction. Gardoqui, now one of the Ministers in the Spanish Council of State, gave them polite assurances, but his written reply contained nothing but recriminations against the United States. After the boundary dispute should be settled, he said, these Indian troubles would cease. Again the commissioners replied, using the arguments outlined in Jefferson's memoir, and pointing as impressively as possible to the arrival of a special American courier at Madrid, then waiting for a reply to their note. No reply came. The

Spanish Ministers, including the new principal Minister, Manuel de Godoy, Duque de la Alcudia, later Principe de la Paz, derisively put off the American envoys with one worthless excuse after another. Under the existing international situation all that Short and Carmichael could get from the imperturbable Spaniards was the empty comfort that Spain would not interfere between the United States and such Indians as inhabited its territory—meaning, of course, American territory recognized as such by Spain.

Thus ended the Spanish negotiation, so far as Jefferson was concerned with it, in a complete failure. He had read aright the imminence of war in Europe. He had misread the alignment of belligerents. No prophet could have foreseen this strange reversal of Spanish policy that resulted in the brief and ill-fated alliance with Great Britain. The alliance broke down, in fact, within a few days after Jefferson retired from his first office under the new Constitution and sought rest on his hilltop home of Monticello. As Jefferson was preparing to leave Philadelphia, in December, 1793, the British navy destroyed the French royalist fleet, trusted to its safe-keeping upon the occupation of Toulon, together with the great naval arsenal at that base. Great Britain, upon the joint Anglo-Spanish occupation of that port, had proclaimed her intention of holding the fleet in custody for the king of France against the time when he should be restored to his throne by the Coalition. The flames of the burning royalist fleet at Toulon reflected ominously in Madrid. A great light burst upon bewildered Spanish statesmen. They saw in England an ally bent upon breaking up French naval power, royalist or republican, for all time.

They saw their ally depriving them of all chance of future naval protection for their great colonial possessions—for Spain looked forward to future alliances with France once the old régime should be restored. After Toulon the honeymoon period of the Anglo-Spanish alliance was over. The end came in 1795 when Spain deserted the British and made a separate peace with France. Cowering under the prospect of revenge from England, alarmed at the fact of Jay's Treaty already having been negotiated with the United States, Spain in a feverish effort to offset what seemed a dangerous Anglo-American rapprochement, gave in to every American demand in the treaty signed at San Lorenzo by Thomas Pinckney on October 27, 1795. Thus did the lucky contingency hoped for by Jefferson finally come to pass, twenty-two months after his retirement. A Federalist Secretary of State, Timothy Pickering, and a Federalist plenipotentiary, Thomas Pinckney, reaped the benefits thereof. For the history of that negotiation the reader is referred to the sketch of Pickering, which follows at the proper place in this volume. We must now turn to the problems of American neutrality.

CHAPTER IV

NEUTRALITY AND THE PECUNIARY DEBT TO FRANCE

I

ONE of the most consequential events in the history of the United States was the French Revolution. We speak not of the portentous influence of that upheaval upon the subsequent social, economic and political development of Europe and other lands, for this same stream of forces already before that time had begun to flow eastward across the Atlantic, and representatives of the best French historical scholarship of today are persuaded that at least the political ideas, notably that of the Rights of Man, of the French Revolution were pollenized fruitfully by American conceptions. Nor do we allude to the most powerful of all the products of that revolution, modern nationalism, the greatest single historical force in the world today. We refer to the fact that the wars of the French Revolution embroiled the great powers of Europe in a generation of life-and-death struggle which absorbed their energies on that continent for the next twenty-five years and left them no strength for aggressive colonial policies in North America. Our contemptuous and powerful back-door neighbours through most of this time, particularly after 1793, set more value on American neutrality than formerly, as Jefferson had prophesied they would do in such a contingency. So occupied were the European powers, not-

ably Spain and Great Britain, through this period, that the United States was able uncudged to develop its new nationality and to profit at the embarrassments of Europe by laying the territorial foundations of its future destiny as a world power. Not until a generation after the last cannon smoke had drifted away from the blood-drenched field of Waterloo was Europe ready lightly to consider another great war. During that time the United States had doubled its national domain, had planted its flag on the coast of the Pacific, and had proclaimed the Monroe Doctrine, whilst none had been in a position to gainsay. All this was made possible by the wars of the French Revolution, which paralyzed the overseas energies of Great Britain, Spain, and France on our continent.²⁰

We have already seen Jefferson in a vague way envisaging such a conflict and the advantage to come from it in securing recognition of American interests, though of course he did not foresee the tremendous events of 1791-1815. Nor was he able during his administration as Secretary of State to profit, as he had hoped to do, by European wars for the success of his own diplomacy, because, contrary to his expectation, Great Britain and Spain became allies from 1793 to 1795. But remembering Jefferson's previous experience with Europe, it is easy to see that in the event of a European war, he could be expected to avoid in every way any involvement in the hostilities of the old world. From the first the idea of abstention from European entanglements had been instinctive with him as indeed it was with nearly every responsible American statesman of that day. This policy of neutrality, and incidents coming up in the execution of it, formed the heaviest burden of

Jefferson's work as Secretary of State and called for the most vital decisions by Washington's Government in the realm of foreign policy.

When war began between France and the Austro-Prussian coalition in 1791 the conflict, which was restricted to European land campaigns, so little touched American affairs that no proclamation of neutrality was even considered; the United States was absolutely neutral by force of circumstances. The sympathies of the American people, however, were altogether with the French in the efforts to repel the monarchical invaders from their soil. The doctrines of the French Revolution in 1789 to 1791 had met universal approbation in the American republic from men of both radical and conservative opinion, from Federalists and Republicans alike, as those two parties began to take form. The press reflected a general lively satisfaction at the successes of the French at Valmy and elsewhere. When the republic was proclaimed and its armies entered the Austrian Netherlands enthusiasm rose the higher. Then came the horrors of the September massacres, of 1792, and the Jacobin Reign of Terror. This immediately destroyed the sympathies of American conservatives, and every Federalist was a conservative. When war was declared by France on Great Britain on February 1, 1793, Federalists everywhere were rallying hurriedly to the "cause of law and order, religion and morality", as they chose to call it.

Disapproval by the Federalists of the later phases of the revolution did not dampen the ardor of the francophiles or the enthusiasm of the general public for France. Had not France been the saviour of American independ-

ence? Had nor France since opened with tolerable fairness its colonial as well as its European ports to American commerce? Had it not from the beginning been party to a most generous treaty of commerce? Was it not even now discussing another in order to adjust minor grievances of American traders and navigators? Above all, were we not bound to this new sister republic by ties of a formal and perpetual alliance, a treaty which undertook to guarantee the French island possessions in the West Indies, and to extend to French warships, public and private, certain exclusive privileges of reception, with prizes, in American ports, prohibiting the same to the enemies of France? In graphic and striking colours might the ungracious and plotting behaviour of Great Britain since the war be compared with the magnanimous and loyal conduct of our ally.

II

News of the declaration of war reached Philadelphia early in April, 1793. On the seventh of that month Jefferson transmitted to the President, then at Mount Vernon, the fact that the French ambassador in London had been given his passports, the certainty of war. It was also known that a new minister, representing the new revolutionary régime in France, was on his way to Philadelphia to replace Ternant, the actual resident, doubtless bringing instructions to reveal the attitude expected of the United States now that its ally was engaged with the old common enemy, in defense against which the treaties of 1778 had been ratified. The actual declaration of war became known in a few days. Wash-

ington set out hurriedly, on April 13, 1793, from his Virginia home to Philadelphia, having written Jefferson that it behooved the country to maintain its neutrality.

What was the relation of a policy of neutrality to the French treaties of 1778?

That this was worrying Washington, as he hurried to the capital city, is evident from the famous list of thirteen questions²¹ which he submitted to his Cabinet on April 18, 1793, and which may be summarized by these two:

1. How, if at all, should the new minister of the French Republic be received?

2. To what extent do the treaties of 1778 with France hold, now that the French monarchy has been overthrown?

From the beginning there had been no question in the Administration as to the desirability of maintaining American neutrality.

Both Hamilton and Jefferson discussed these questions at length in the Cabinet meeting April 19, and each embodied his views subsequently in long written opinions.

Hamilton saw in the abrupt change of governments in France a chance for the United States to rid itself of the onerous obligations of the treaties of 1778 in regard to the French islands. Assuming that an unqualified reception of the new French minister would be full recognition of the continuing force of the treaties of 1778, he thought it would be possible to qualify that reception by some declaration that would suspend the operation of the alliance, so that the United States could say to foreign powers, if questioned: "In receiving the Minister of France, we

have not acknowledged ourself its ally. We have reserved that point for future discussion." In support of this policy he went into arguments based on national interests and on what he conceived to be international law. He was convinced that the accusations made against the King by the Convention, preceding his trial and execution, had been false, that Louis XVI had been overthrown by unfortunate circumstances which did not constitute an act of national justice; that the United States, in repudiating the new régime in France, had a right to free itself from a treaty which by virtue of the violent change in governments in France had become less useful, or materially less advantageous and more dangerous than previously it had been; that the treaty of alliance had been made with the personal monarch Louis XVI, "a *man* [italics inserted] from whom essential benefits have been received"; that if forced to choose, the grateful and honourable part for the United States would be to join the Coalition and assist the heirs of Louis XVI to get back on the throne rather than to allow our treaty of alliance to bind us to a "triumphant faction" which had temporarily succeeded the King in power. "Suppose," asked Hamilton, "the call of the actual rulers to be complied with, and the war to have been entered into by the ally [i.e., the United States]. Suppose the expelled monarch to have re-entered his former dominions and to have been joined by one half of his subjects—would the obligation then stand? He will now have added to the title of being the formal party to the contract that of being the actual possessor of one half of the country and of the wishes of one half of the nation." "Is it not evident," he added, "that there must

be an option to consider the operation of the alliance as suspended during the contest concerning the government, that on the one hand there may not be a necessity of taking part with the expelled monarch against the apparent will of the nation, or, on the other, a necessity of joining the ruling powers of the moment against the immediate party with whom the contract was made and from whom the consideration may have flowed?"

Hamilton believed that thus to qualify the reception of the minister was justifiable from the point of international law, and that it coincided with the interests of the United States. The military stipulations of the treaties, he argued, were contrary to that neutrality in the quarrels of Europe which it was our true policy to cultivate and maintain. "It would be our interest, in the abstract, to be disengaged from them, and take the chance of future negotiations, for a better treaty of commerce."

Hamilton appealed, in part, to the textual words of the title of the treaty of alliance, to answer Washington's question: "Are the United States obliged by good faith to consider the treaties heretofore made with France as applying to the present situation of the parties?" That treaty was entitled, "*Traité d'alliance éventuelle et défensive*." Article II used the words, "the present defensive alliance." He then proceeded to argue that the aggression in the war against Great Britain was on the side of France; it had been that nation which had declared war successively against each of the powers which were arrayed against it; its revolutionary government had invited the people of other nations to rise against their respective monarchs and had offered them the aid

of republican France to defend their liberties; it was this France who had assumed the offensive by disturbing the repose of her neighbours to a degree tantamount to an act of war.

This did not take into consideration the preparations of Prussia and Austria to invade France, which had been anticipated by the French declaration of war; and it ignored the intrigues of those monarchs with Louis XVI to overturn the constitution which he had sworn to defend. It was precisely the sort of argument which one might expect from the statesman who has become in American history the classic example of the hard-headed business man who bases his political philosophy on the belief that private property and private interest are the strongest factors in human conduct; that the most perfect government is one which can rally forces to its support, and which, founding its principles on corresponding motives, can then protect them against the ardent and warm-blooded aspirations of the mass of human hearts. The Rights of Man and not the rights of property was the slogan of the French Revolution, as it had been of the American Revolution, and Hamilton had little use for the rights of man. Law and order to him meant the inviolability of private property. To repudiate the French minister, the French Revolution and the French alliance all in one act suited him well.

Jefferson faced a totally opposite political pole. He understood the violence which had been resorted to under the Reign of Terror to repel the invader from the soil of France and to stamp out treason on the nation's hearthstone. Painfully but philosophically he had envisaged the bloody scene, concluding that when the final

balance had been struck there were gains for liberty and human happiness. For those unfortunate thousands who had lost their lives in the Revolution, some of them his old friends, former scientific and literary companions, Jefferson felt that resigned sorrow which one has for those fallen in battle. "My own affections have been deeply wounded," he declared, "by some of the martyrs to this cause, but rather than it should have failed, I would have seen half the earth desolated. Were there but an Adam and Eve left in every country and left free, it would be better than it now is." Jefferson's faith was in the common man, the people, whom Hamilton called "a great beast," and to the Virginian the French Revolution represented the cause of the common man. In the same way that many people felt in our own times, in the course of the war with Germany, that the triumph or failure of the cause of the allies meant the success or the breakdown of democracy all over the world, so Jefferson felt that the success or failure of republican principles in France meant their increasing strength or weakness in the United States. "I continue eternally attached to the principles of your revolution," he wrote to Brissot de Warville, on May 8, 1793. "I hope it will end in the establishment of some firm government friendly to liberty and capable of maintaining it. If it does not, I feel that the zealous apostles of English despotism here will increase the number of its disciples."²²

Jefferson, like Washington and Hamilton, and indeed like all American statesmen of the period without exception, was not in favour of intervening in the war on the side of France. But he wished the United States to exercise a neutrality as benevolent as possible toward

France, particularly toward the new republican France. He did justice to the ingenuity if not the soundness of Hamilton's reasoning and then proceeded to destroy it.

The treaty of alliance, he pointed out, had been made with the French nation, not with the man Louis XVI; if the French nation had changed its form of government—the United States had done so in 1788—that was not for the ally to scrutinize, particularly when that change had been from a perfect despotism to a form of government similar in its principles to that of the allied republic. He believed that there should be no question in international law about receiving Genet, the new French minister then on his way to Philadelphia. As to whether the French treaties continued in force, Jefferson averred that the only thing that could justify a refusal to carry out a treaty obligation was incapacity, or the imminent danger of self-destruction by doing so; that neither of these contingencies threatened the country; that it was casuistical to plead that a treaty was less useful, not so advantageous as formerly, or dangerous—all political treaties are dangerous. It was more pleasing, he believed, to the American people to continue the treaties with a republican government than with an absolute monarchical one. He advised that the minister of the French Republic be received unqualifiedly; consequently the treaties would *ipso facto* continue in force. Certainly in doing this Jefferson never had any idea of actually intervening in the war to guarantee French possession of those West India islands,²³ and he had the excuse that France, much to his satisfaction, as we have seen in a previous volume, had taken no step for the last ten years to assist the United States to dislodge British

troops from its territory along the northwestern frontier. France had not yet even called on the United States to become its active ally, and Jefferson doubted if it would. If it did, there would then be time enough to consider that question, "to decide whether a ten year forbearance in us to call them into the guarantee of our posts, entitles us to some indulgence," or whether we could be expected to begin a war when not prepared for it, or whether the French West Indies really would be lost if the United States did not save them, or (paradoxically) whether England would really venture to involve the United States by attacking those islands.

Everybody in the Administration, we repeat, favoured a policy of neutrality. Washington issued a proclamation, drafted by Atty. General E. Randolph, enjoining on American citizens, "conduct friendly and impartial toward the belligerent powers," and gave instructions "to those officers to whom it belongs" to bring prosecutions in United States courts against all persons violating the laws of nations within the United States, with respect to the powers at war. At Jefferson's instance the word "neutrality" was studiously omitted from the proclamation, and American citizens were warned against the danger of carrying on the high seas "articles which are deemed contraband by the *modern usage* [italics inserted] of nations." He hoped that Great Britain, to ensure a perfect neutrality on the part of the United States, might be induced to adopt a definition of contraband which would not include foodstuffs and naval stores, and perhaps adhere to other American interpretations of modern usage. This proved futile. The British did not notice the subtlety and became satisfied, gener-

ally, with American neutrality, not hesitating the while to enforce on the high seas their own conceptions of international law. Jefferson himself in his official correspondence soon fell into the habit of referring to it, as everybody else did, as the proclamation of neutrality.

The President decided, without the unanimous advice of his Cabinet, to receive the new French minister unqualifiedly. This was a signal and well deserved victory for Jefferson.

III

At this point, before turning to the problems raised for the Secretary of State and the Government of Washington generally in executing the adopted policy of neutrality, it is convenient to notice the first request made by the Citizen Genet, following his reception by the President. This concerned the pecuniary debt of the United States to France, the result of generous loans by the Government of Louis XVI during the American Revolution. At the end of the war, the United States owed France 35,000,000 livres, as well as having received as outright gifts approximately the sum of 11,000,000 livres,²⁴ together with another million furnished to France by Spain. Different terms for repayment and varying rates of interest were attached to the several loans, but instalments of principal began to fall due January 1, 1786. When that time came the Congress, with its limited powers under the imperfect Articles of Confederation, had been unable to collect the quotas of taxes from the several states. Complete bankruptcy ensued. It was impossible to make payments on principal or even to

meet interest. The debt continued accumulating arrears until the political reorganization under the Constitution. When Hamilton's credit system went into operation United States securities sprang to par and made it possible for the federal government to borrow money at reasonable rates. Jefferson in one of his contemporary dispatches to Short observed with great satisfaction that the credit of the United States was the best in the world. Hamilton proposed that our long overdue debt to France be taken care of. Acts of Congress of August 4 and 12, 1790, enabled him to make further loans in Holland from private bankers, with which the arrears on the French debt were taken up, and from then on instalments of principal, together with running interest, were met promptly year by year, according to a schedule which would have extinguished the debt by February 1, 1807. Meanwhile two new Dutch private loans were easily carried.

In 1792, there had been advanced from the treasury, against the advice of Hamilton, to Ternant the French minister at Philadelphia, the sum of 4,000,000 livres (\$726,000) for relief work for French refugees from Santo Domingo, following the slave insurrection on that island. This was credited by France to the account of the United States on future debt payments. A precedent thus had been established for anticipating the schedule of payments. The terms under which the loans had been made allowed the Congress to make payments before due if that should be advantageous to the debtor.

Genet's instructions ordered him to solicit the advance payment of the remaining debt, which then amounted to \$2,461,513,²⁵ the same to be expended by France in

the United States in purchasing provisions, naval stores, and in fulfilling other "particular services." The debt could be paid, it was suggested, either in cash, bank notes the equivalent of cash, or United States bonds. The money thus available would be disbursed by French purchasing agents in different sections in order to make the proceeding advantageous to the whole country. In this way the French Executive Council hoped to help finance the war against England, by defraying the expenses of Genet's mission, which included, of course, the fitting-out of privateers, the sending of provisions and naval stores, even of undisputed contraband, to France, and the financing of such expeditions as those already being organized in the West against Louisiana.

The United States Government must keep vigilant guard against violation of its neutrality and must limit the scope of Genet's activity accordingly; but it was not unreasonable for France to expect that a nation which during several years never even paid the interest on an overdue debt, now, with arrears caught up, should be willing to pay a little ahead of time. Since the original contracts allowed advance payment, such a favour to France could not be construed by Great Britain as a violation of neutrality. As if to protect the non-contraband part of such purchases, the treaty of commerce and amity of 1778 between France and the United States stipulated free ships free goods, freedom to trade between ports of the enemy in time of war, except in contraband, and specifically excluded naval stores and provisions from the agreed list of contraband. Considering what vital assistance France had given to the United States only a few years before, as well as the terms of our treaties with

that power, it would not have been an improper benevolence to accede to this request.

The subject came up for decision in Washington's Cabinet, as did all major questions of policy. The Secretary of the Treasury had never been willing to take advantage of the revolution in the French Government to suspend payment of the debt. His sense of national financial integrity would never sponsor such a move as this. Even if the United States never should recognize the republican revolutionary government, he considered that it was incumbent to pay the regular instalments into the coffers of the Bourbon treasury, no matter who was in temporary control of it. He had also refused to take advantage of the inflation of the French currency to pay off the debt in depreciated *assignats*.²⁶ But his heart was against the cause of the Revolution, and realizing the immense damage which this money could do to the enemies of France if the terms of our commercial treaty with that power held their force, he found good arguments against advancing one penny before instalments should be due, as easily as he had found arguments against continuing the French treaties themselves.

Previous propositions had been made to the Government to settle France's debt in this way. Various European and American bankers had been negotiating to purchase it from France, presumably at a discount, and convert it into United States bonds bearing a slightly higher rate of interest.²⁷ Overtures to this end had been rejected. Only a few weeks before Genet's arrival, the son-in-law of Vice President Adams, William S. Smith, who had been acting as a French purchasing agent in America during the war between France and the Austro-

Prussian coalition, had submitted a proposal of the Provisional Executive Council of France for exchanging the American debt for American supplies. The Cabinet unanimously had decided to reject it. Hamilton was for now refusing Genet's application by simple reference to the recent refusal of Smith's proposal. He stated for the President: "The United States not being bound by the terms of their contract to make the anticipated payments desired, there is no necessity for a specification of the motives for not doing it. No adequate reasons but the true ones can be assigned for the non-compliance, and the assignment of these would not be wholly without inconvenience." Jefferson was in favour of keeping alive the friendly sentiments of France by advancing the instalments still to fall due during the remainder of the actual year 1793. At any rate, he advocated at least softening a refusal with some sort of friendly explanation. Washington decided on a refusal, accompanied by an explanation, to wit: that no cash payment in anticipation was within the resources of the treasury; that to pay with bonds would be to throw suddenly onto the market such a mass of securities as to depreciate the credit of the Government as well as to cause France to lose in proportion to the dropping of those bonds below par.

Refusal to anticipate payment of the remainder of the debt in this way was a great blow to Genet's plans, for his Government would have been quite willing to suffer the loss occasioned by having to sell these bonds below par. But no technical exception could be taken to the American position by France. The United States was well within its rights in choosing this option to adhere to the original schedule, even as it would have been equally

within its rights in advancing payments if it had seen fit. In view of the fact that much of this money undoubtedly would have been spent by Genet in the carrying out of his unneutral western projects against Louisiana, and that thus it would have involved the United States Government in the expense and inconvenience of preventing them, there is much to be said for the wisdom of Hamilton's opinion against anticipating payments. As it was, Genet appropriated the remainder of the advances which had been made for Santo Domingo relief work and used it for his current expenses, thus forcing the United States treasury to meet the drafts drawn by the Santo Domingo colonial government or see its citizens lose their payments.

Despite the fact that payment in anticipation of the balance of the debt to France was refused in 1793, our account to that nation and our debts to Dutch creditors were eventually wiped out by what amounted to the same method in 1795, under authority of an act of Congress. The treasury in that year and 1796 made arrangement with one James Swan, an interesting American, the purchasing agent of the French Government in the United States, whereby the debt to France was converted into United States domestic bonds bearing five and one-half per cent interest, which had been created for that purpose by an act of Congress in that year. The French debt was thus merged into the domestic debt, and the bonds finally retired in 1815.²⁸ Our other foreign debts, in the Netherlands, were also similarly refunded in 1795 into domestic bonds.

IV

The problems of neutrality which straightway confronted the United States Government after Washington's proclamation and which involved the Secretary of State in a prodigious labour, consisted of two categories: those relating to the enforcement of neutrality within our own territory and waters, and those pertaining to the neutral rights of the United States and its citizens on the high seas.

Let us consider the first of these. The new minister of the French Republic, as Jefferson had surmised, had no instructions to demand the entrance of the United States in the war on the side of its ally. A certain kind of American neutrality was more valuable to France than American belligerency. Given a sufficient benevolence on the part of the United States, hostile expeditions fitted out in American territory could be set on foot against the adjacent colonial domains of France's enemies, particularly against Louisiana; and both Spanish and British colonies, in which existed preponderant populations of French nationality, could be flooded with anti-monarchical propaganda. French privateers and public warships with their prizes, had a right to shelter in American waters; a benevolent interpretation of Articles XVII and XXII might cause the Government to permit such ships of war to dispose of their prizes in the United States, and with the proceeds or other means to equip new vessels to sally forth and prey on British commerce on the North American trade routes. Such a privilege might be considered analogous to what would have existed had Germany been permitted, during the

years 1914-1917, to utilize American ports as submarine bases under Article XIX of the Prussian treaty of 1799. Genet was therefore instructed to strengthen the Americans in the principles which had impelled them to unite themselves to France, to make them feel that they could have no ally more natural and more disposed to treat them in a brotherly way, rather than with the cold calculation which had been the basis of the "Machiavelianism which had directed the operations of the war of independence" in the minds of Louis XVI's advisers; to expand the negotiations for a new commercial treaty already begun by the former minister, Ternant, into a treaty which would combine commercial and political interests by an agreement to exclude from the harbours of both parties the ships of those powers which still maintained closed colonial monopolies. "The pact which the French people will support with all the energy which characterizes them, and of which they already have given abundant proof, will rapidly lead to the enfranchisement of Spanish America, to the opening of the Mississippi to the inhabitants of Kentucky, and to the delivery of our old comrades of Louisiana from the tyrannical yoke of Spain, and perhaps to add to the American constellation the bright star of Canada." While awaiting the results of his negotiations for a treaty making common cause with France, Genet was instructed to take every measure compatible with his position to stimulate the growth of principles of liberty and independence in the provinces adjacent to the United States. "The Kentuckians, long since burning with their legitimate desire for the navigation of the Mississippi, which belongs to them by natural right and positive law, will

probably second his [Genet's] efforts without compromising the Congress." Consequently the Executive Council authorized Genet "to maintain agents in Kentucky and also to send some to Louisiana, and to make the expenditures called for to facilitate the execution of this project, the Executive Council trusting to his prudence and loyalty in this object." While negotiating the new treaty he was to get from the Americans as favourable as possible a construction of the old treaties of 1778.

Genet had no sooner landed, at Charleston, than he set up prize courts for the condemnation and sale of prizes made by the frigate which had brought him, and began to fit out other prizes as new French privateers to go out and capture British ships off the American coasts. He left to the French consul at that port, Mangourit, the execution of his plans for the raising of two armies of American frontiersmen, in Georgia and Kentucky respectively, to march against Spanish provinces on the Gulf of Mexico. Blank commissions brought along for the purpose by Genet were filled in with the names of American citizens enlisted as French officers. Among them was the restive and unsteady George Rogers Clark, of Kentucky, who accepted a brigadier-generalship to lead a legion of his fellow-citizens down the Mississippi to capture New Orleans. Similar French commissions were ready for American sea-captains who might wish to take command of French privateers equipped in American harbours. Genet's short but active sojourn in Charleston, before he had even been presented to the President, or had heard of the proclamation of neutrality, raised several vexing problems for Jefferson to settle.

The new minister then proceeded overland to the

national capital. All along the route he was acclaimed by the democratic clubs and pro-French republican sympathizers, who far outnumbered the conservative members of society, so that his journey seemed a veritable triumphal progress. At Philadelphia an enthusiastic popular reception was tendered him. It was therefore with a shock that he found himself very coolly received by President Washington and observed on the walls of Washington's office portraits of the late "Capetian" kings of France. Even more of a shock it was to learn that the President had determined upon a policy of cautious and unswerving neutrality.

Cases rapidly came up for decision. Genet's frigate went by sea from Charleston to Philadelphia and took several prizes on its way, one of them, the British ship *Grange*, within Delaware Bay. Just before Genet's arrival at Philadelphia one of the privateers fitted out by him in Charleston, with the approval of Governor Moultrie, the *Citizen Genet*, came up the river with one of four prizes she had made. A French consul converted into a prize court judge condemned her. Soon nearly every important harbour from Boston to Charleston was swarming with French privateers, and new ones in the shape of converted prizes were fitting out in the Delaware under the very eyes of the national Government. Meanwhile American citizens were enlisting for service aboard them. The British minister, Hammond, was quick to protest all these actions as violations of American neutrality. Jefferson duly protested them, in accordance with the policy of the Government decided in Cabinet. Genet replied to Jefferson that the treaty of 1778, which prohibited the enemies of France from fitting

out privateers in American ports, allowed that privilege to France, that the same treaty which prohibited the enemies of France from bringing their prizes or privateers into American ports not only allowed French privateers to come in with their prizes, but allowed them to be sold by French consular prize courts therein and also gave to France the privilege of fitting out privateers in American waters. The treaty, of course, did no such thing. As Hamilton quickly pointed out, it simply prevented the reception of British prizes or the reception or the fitting-out of British privateers in American harbours (except in stress of weather), and British prizes, while it gave shelter to French privateers and their prizes in our waters without saying anything about the same fitting-out or the disposition of prizes thus sheltered.

Jefferson, however, was inclined to believe, as opposed to Hamilton, that such an implication had been so understood universally, "by everyone here, by ourselves at Charleston, by Genet. Still [it was] true if not expressly permitted, may be forbidden. But till be forbidden must be a slight offense. The Prohibition [ought] to be future not Retrospective." So he noted on May 20, 1793. He soon agreed, nevertheless, that the obligations of neutrality required that France be prohibited from arming vessels in our ports.

On these questions the Cabinet decided: to require restitution of the ship *Grange*, on the ground that the Delaware River was a part of American territorial waters—a famous precedent in international law; to order out of American waters all privateers fitted out in them as well as prizes taken by such vessels; to forbid such fitting-out of privateers by belligerents in the future; to

forbid the functioning of foreign courts within American sovereignty; to prosecute American citizens enlisting in the United States under the service of a foreign power.²⁹ In regard to prizes made by the privateers Jefferson thus had to acknowledge the justification of Hammond's protests, much to the indignation of Genet, and the British minister was given a limited ground to claim damages for spoliations. By the mixed claims commission set up under Article VII of the British-American treaty of 1794, British subjects eventually, in 1804, received awards to the total amount of \$143,428.

Would rules for neutral conduct decided by Washington's Cabinet, which represented after all nothing more than the actual Administration's conception of the obligations of a neutral under international law, stand in a court of law in so far as not based on treaties which were by the Constitution the law of the land? As yet there was no statute on the subject. Gideon Henfield, one of the American citizens who had taken service on the *Citizen Genet* privateer, was arrested and indicted at common law by the Attorney General for disturbing the peace. It was declared that he was punishable for having violated the treaties of amity with Prussia and the Netherlands, powers at war with France. The federal judges charged the jury that Henfield had committed a crime. A sympathetic jury acquitted him; indeed, had it convicted him there was no penalty prescribed for a court to sentence. Actual court proceeding against violators of American neutrality were not practical until after the meeting of Congress and the passage of the Neutrality Act of June 5, 1794.³⁰

Jefferson at first had looked upon Genet with kind-

est feelings as a man representing the new French republic, with whom it was the interest of the United States to maintain the friendliest relations. He gave him private tutelage as to just how the political winds blew in the American Government, even as Hamilton had sometimes apprised the British minister; and he wrote letters of introduction to Governor Shelby of Kentucky, at Genet's request, presenting the latter's agent, Michaux, as a French citizen possessing Jefferson's confidence. He did this when he well knew from Genet's own lips that Michaux was the bearer of instructions to "two generals in Kentucky" who were organizing with French commissions, and expenses paid by France, an expedition to set out against Louisiana; and after he had seen proclamations which were given to Michaux to be delivered in Canada and Louisiana, inviting the inhabitants to revolt against Great Britain and Spain. Understanding from Genet that the Kentucky expeditions were to rendezvous outside the territory of the United States, Jefferson told him he "did not care what insurrections should be excited in Louisiana." But Genet's excitable nature and arrogant temper soon convinced Jefferson that the appointment had been calamitous. Fuming at the strict neutrality of Washington the Frenchman in his notes to the Secretary of State employed such phrases as: "the philosophical principles proclaimed by the President"; "the opinions, private or public of the President, and this aegis not appearing to you sufficient"; "the Federal Government has been eager, enraged I know not by what influence"; "they pursue with rage the French privateers, by the orders of the President"; "cowardly abandonment of their friends"; "in vain the

thirst of riches preponderates against honor in the political balance of America; all this management, all these condescensions, all this humiliation, end in nothing"; "if you are in a position to maintain the sovereignty of your people, speak." Insulting phrases like these, Genet's defiance of the Government's orders to privateers to depart American ports and the envoy's continued efforts to appeal to the people over the heads of the Government brought his downfall. A Secretary of State whose political principles impelled him to be as benevolent as possible to the French Republic joined in advising the recall of the obnoxious minister. A special courier was dispatched to France for that purpose.

Meanwhile Genet until the arrival of his recall covertly continued his activities in stirring up the western settlers to march against Spanish Louisiana and Florida. Preparations for such an attack failed because of lack of financial support rather than for any public notoriety about them. The Governor of Kentucky refused to prosecute alleged offenders. He wrote Jefferson that all citizens had a right to leave the state and that he had no power to prevent their taking arms with them—an argument which undoubtedly appealed to the Secretary of State's formal opinions. It was after Jefferson had resigned that Washington on March 24, 1794, issued a second proclamation of neutrality with a view of preventing these military expeditions in the West setting out against a friendly power, with a warning that all persons enlisting others or enrolling themselves in such expeditions would be prosecuted. The Neutrality Act of June 5, 1794, above referred to, gave final statutory support for preventing such expeditions. Genet's enterprises

by that time had already collapsed, the French cause had been almost irreparably ruined, and the envoy himself had been recalled by his superiors with the scathing reminder that he had been instructed "to treat with the Government of the United States, not with a portion of the people; to be an organ of the French Republic near Congress, and not the head of an American party. . . . We cannot recognize any authority in the United States beyond that of the President and Congress." At a time when the guillotine was falling so fast Genet did not dare to go home. He died in the United States many years afterward, where he had established himself after marrying the daughter of Governor Clinton of New York during the hectic days of 1793.

V

Maintenance of neutrality at home, we have said, was only one of the problems that confronted the United States. Even more important was the matter of neutral rights at sea. Here, too, American neutrality would have been much more advantageous to France than American belligerency. If the United States were at war with Great Britain the superior British navy would sweep the seas and prevent all our merchant vessels from reaching France; but if the United States were neutral and insisted on recognition of its neutral rights as laid down in the treaty of amity and commerce of 1778 with France, and subsequent treaties with the Netherlands, Sweden and Prussia, France would benefit greatly therefrom, because neutral ships could then supply her with articles which her own vessels, in danger of capture from the

British cruisers, could no longer bring. These treaties had stipulated free ships free goods, except in the case of contraband, and had excluded naval stores and food-stuffs from the agreed list of contraband. France could also open, as she did, her colonial commerce to the ships of all nations, and thus rely on the protection of neutral bottoms to keep up her communications with those colonies when her own vessels could no longer get through the British fleet. In this case the Franco-American treaties had repudiated the British Rule of 1756 and stipulated the right for neutral ships to trade between belligerent ports, not blockaded, in everything except contraband of war. The French had signed these articles, of course, with the anticipation that they would be of advantage in the next war with Great Britain. There was no need of them in time of peace, and France was not likely to be at war with any other maritime power which did not subscribe to them, because as late as 1780 nearly all the other maritime nations of Europe had accepted these principles. If the United States could enforce them against Great Britain American neutrality would be of enormous, if not decisive, importance to France.

The British had no intention of observing such principles. They had never admitted that they were international law, although in a few instances Great Britain had signed treaties embodying them, with small-navy nations like the Netherlands, and had lived to regret it. When the war began Great Britain did not modify her traditional practice of taking enemy property whenever and wherever it could be found on the high seas. When Grenville, the Foreign Minister, learned of the French

efforts to secure advance payment of the American debt and to spend it partly in foodstuffs, he instructed Hammond to warn the American Government that Great Britain would consider such provisions as French property and subject to capture even though on neutral ships, and that contraband would be interpreted by Great Britain as including everything "of such a nature as to enable the enemies of this country to carry on the war against us." Since Hammond learned confidentially from Hamilton that advances on the French debt had been refused, he preferred not to open up a subject bound to be a controversy; but privately he explained to Hamilton the nature of his Government's attitude on neutral rights.

The British policy was soon incorporated in two orders-in-council which laid down instructions to British naval commanders; one of June 8, 1793, to bring in all neutral ships bound for France with cargoes of corn, flour or meal. These cargoes were then to be paid for at appraised prices, with due allowance for freight and demurrage. In this way the British navy, avoiding an outright inclusion of foodstuffs as contraband, managed to divert the stream of grain from America to France into the grain bins of England. A second order of November 6, 1793, not announced except without warning by captains of cruisers themselves, directed that all vessels laden with goods the product of any French colony, or carrying provisions or other supplies for the use of any such colony, were to be brought in for adjudication. Since a comparatively liberal commerce with the French West Indies had been open to American ships before the war, this order went beyond the Rule of 1756;

the following January it was brought back to the basis of that rule, by a supplementary order that ships laden with French West Indian colonial produce bound for a European port were to be taken.

These orders-in-council paid no attention to the liberal provisions of the Franco-American treaties and the policy of the United States as written into our other treaties. Jefferson immediately directed the United States minister at London, Thomas Pinckney, to protest them. Before this Hammond had had conversations with Alexander Hamilton on the order of June 8. Hamilton said that while he regarded the order as harsh and unprecedented, requiring protest to the British Court at London, that he would like to be furnished with any exposition of the measure that Hammond might receive about it, in order that a timely explanation might remove an unfavorable impression in the United States Government. Grenville, thus persuaded that nothing dangerous would follow the American protests, did nothing more than reply to them in the same polite language in which they were delivered. Meanwhile England continued to execute its policy, to win the war against France with her navy. It is doubtful whether it would have relaxed even if it believed the American protests were to be followed up in more vigorous fashion.

From what has been disclosed of the intimate relations between the Secretary of the Treasury and the British Government, and his frequent interference with Jefferson's department, it is little wonder that Jefferson should have been disgusted with the unpleasant position which he held in the Cabinet. He moreover believed that Hamilton was trying through the influence

of the national debt on business interests to turn the federal Government into a more powerful instrument than allowed by a fair interpretation of the Constitution; that he was only waiting for a time of stress and national crisis to achieve his ends by a loose interpretation of implied powers which would create a government approaching that of Hamilton's favorite model, England. Jefferson soberly feared that Hamilton aimed at a monarchy in America. He remonstrated to Washington on this subject. Washington called on Hamilton to defend himself against Jefferson's charges, which the latter did at length. In spite of Jefferson's repeated requests to be relieved of his office, Washington, alluding to Jefferson's own entreaties that the President himself should not retire from public life at the end of his first term, induced the Virginian to continue in office until the end of 1793. By that time Jefferson was determined to leave. When he resigned, on the last day of December, the problems of American neutrality were mostly settled, aside from the question of neutral rights at sea. That question soon combined with the unsatisfactory frontier situation to produce an international crisis of the first importance, which was partly solved by the famous treaty signed by John Jay in that year, a treaty which acquiesced in the British maritime practice for the duration of the war, thus repudiating to that extent our obligations with France, a treaty which Jefferson could not sufficiently describe as abominable. If it had not been signed, war with Great Britain would doubtlessly have followed. This would have meant the cessation of American imports, the collapse of American credit, and with it very likely the crumbling of the new government of the Constitu-

tion. We can imagine that when Washington decided to accept the treaty he kept it at arm's length and with the other hand closed his nostrils. As for Hamilton, the ratification of the treaty was a sanction of his policy, though not so easily can one sanction his intrigues to further such a policy.

One other subject of American foreign affairs during Jefferson's secretaryship must be mentioned briefly, the Barbary States. In the previous volume we have observed how the pirateships of these states had commenced to prey on American vessels plying the Mediterranean as soon as the protection of the British flag had been removed, a situation which was observed with complacency in England as not ill-deserved requital for American independence. The weak government of the American Confederation after 1783 had been unable either to force the Barbary States to observe American rights or to raise enough money to ransom the American citizens which those powers unblushingly enslaved. It is indeed surprising that Morocco, even through Spanish good-offices, should have accepted a treaty, 1786, which deprived its sultan of such easy prey. Jefferson during his sojourn in France had become impressed indelibly with the painful and degrading fate of his fellow-citizens in chains in Algiers, but the poverty and impotency of his Government nullified all efforts to secure their release. His solution for the trouble was the creation of a league of the United States and the continental maritime powers of Europe to reduce the Barbary States to peaceful conduct by a continual blockade of their ports, a blockade not to be interrupted, even in case of war between the blockading powers. He had the support of France in

this, and apparently of the representatives at Paris of the maritime states of the rest of the continent, but he could do nothing effectually to forward such a scheme until he could demonstrate the willingness and ability of Congress to furnish its complement of naval force. Congress could not be persuaded to furnish a single frigate.

When Jefferson became Secretary of State, American citizens still suffered slavery in Algiers and the capture of our ships constituted one of the main sources of revenue for the barbarous ruler of that state. One of the Secretary's first solitudes was to achieve the liberation of these unfortunate men. In December, 1790, he presented two reports on this subject, one to the President and the other to the House of Representatives. The first recounted that there were two American shipmasters held in the *bagnios* of the Dey of Algiers for a ransom of 3,000 sequins each, and ten sailors, for whom 750 each was demanded. The second report contained a comprehensive description of the state of our commerce in the Mediterranean and the impediments which the Algerines placed in the way of it by their nefarious operations, to the direct advantage of England's protected commerce in that sea. He advocated a naval force for the United States and again recurred to his idea of a league of maritime powers. He even thought of diplomatic overtures in that direction, but the project never had any support in the United States and the outbreak of the wars of the French Revolution soon made it impossible in Europe. On February 22, 1792, the Senate, in answer to Washington's request for advice in the matter, recommended the construction of a naval force as soon as the public finances should permit, but meanwhile ad-

vised buying, after the custom of European governments in dealing with those states, a treaty from Algiers, at a sum not to exceed \$40,000, with \$20,000 annual tribute to pay the Dey for being good to us; if this were not possible, the liberation of the enslaved Americans should be secured at a price not to exceed \$40,000. Congress voted \$50,000 to cover expenses of such a negotiation. The captives, we should remark here, could not then have been ransomed for ten times that figure.

Admiral John Paul Jones, who had long since evinced a resolute interest in the fate of the American slaves and who had yearned to lead a naval attack to free them, was appointed to carry on the negotiation. He died in Paris before his commission reached him. Thomas Barclay, empowered as Jones's successor, also died, in Lisbon, in December, 1792, on his way to the Mediterranean. The mission then passed into the hands of David Humphreys, who had been appointed in 1791 as the first United States minister to Portugal. At Alicante on his way to Algiers Humphreys was startled to learn that a truce had suddenly been concluded between Portugal and the Algerines, through the mediation of the British consul at Algiers. While the two nations had been at war, Portugal had blocked up the Straits of Gibraltar and prevented the corsairs from sallying forth into the Atlantic. After this truce they quickly appeared west of the straits and took American ships right off the mouth of the Tagus. Eleven vessels were thus captured and one hundred and nine more sailors put in chains, penned in foulest confinement and subjected to the heaviest and most degrading labour. Immediately all American commerce to the Mediterranean and the Ibe-

rian peninsula was demoralized. In the United States the British Government was widely blamed for this, and the bitter feeling added to resentment against that power during the crisis of the spring of 1794. Lord Grenville denied to our minister in London, Thomas Pinckney, that Great Britain had any other purpose than that of unhampering the naval energies of her ally against France. Certainly English commercial interests profited by it, though the historical facts of the negotiation of the truce and the real motives of Great Britain are yet to be established.

Congress passed an act, approved March 27, 1794, authorizing the construction of a navy, with the provision that if meanwhile peace should have been ratified with Algiers, work on the fleet should be suspended. Thus did the new national navy begin. Peace came with Algiers in 1795, shamefully purchased, but too late to prevent the completion of the new navy. The peace cost nearly a million dollars, that is, over the amount expended on the construction of the fleet. Jefferson had long since retired, but as President in 1801 and thereafter it was one of his satisfactions to direct the use of this naval force to put peace relations with all the Barbary States on a more durable footing.

As Secretary of State Jefferson was not destined to bring any of the great problems of foreign policy to a satisfactory settlement—the redemption and protection of American territorial integrity from Great Britain and Spain, the recognition of our demand to navigate the Mississippi to the sea, the arrangement of treaties of commerce with those two great powers. No treaty was concluded during his administration, much as two were needed. This was due to a complication of European

international relations which would have broken in Jefferson's favour had he continued in office two years longer. It was for other men of lesser caliber to reap the advantages which Jefferson had looked forward to as the result of confidently expected convulsions in the Old World. He had been a firm advocate of American interests as well as a staunch defender of American rights. An unwavering friend of democracy at home and abroad, he did not allow his predilection for France to stampede him into any involvement in European politics in the exciting months of 1793 when he so successfully administered the American policy of neutrality. He filled his office well and faithfully, a hard-working public servant on whom almost alone fell the whole labour of that department.³¹ Better than any other person available at that time could have done, he guided the diplomacy of his country through one of the great crises of our foreign relations, even though his control of affairs within his department was hampered invidiously by the garrulous intimacy with the British minister of his equally patriotic colleague, Alexander Hamilton, whose financial policy and its relation to the foundation of American nationality Jefferson never could appreciate or adequately understand. When all factors are weighed, in the history of those significant years, it was the stable wisdom, the imperturbable sagacity, the unmistakable judgment of George Washington, holding the beam between the two rival patriots in his Cabinet, between the two opposite statesmen of American political life, that took what was best from each active mind, evaded the errors of both, and utilized the talents of these two extraordinary men for the great good of the United States.

EDMUND RANDOLPH

SECRETARY OF STATE

JANUARY 2, 1794, TO AUGUST 19, 1795

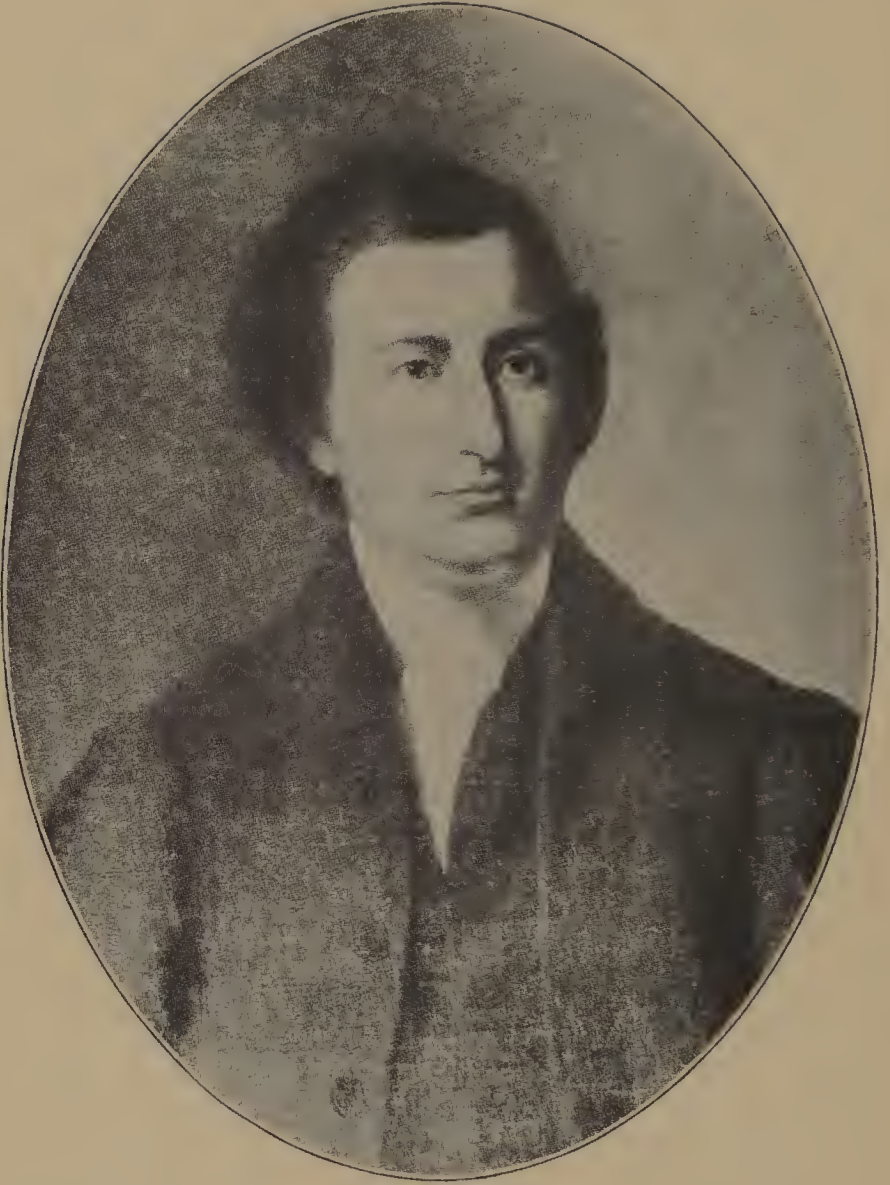
BY

DICE ROBINS ANDERSON, PH.D., LL.D.

PRESIDENT, RANDOLPH-MACON WOMAN'S COLLEGE

EDMUND RANDOLPH

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Edm : Randolph.

EDMUND RANDOLPH

CHAPTER I

THE SECOND SECRETARY OF STATE

EDMUND RANDOLPH, second Secretary of State under the Constitution of the United States, came of the distinguished Virginia family whose name he bore. The Randolph family for generations had occupied a worthy place in England and since the middle of the seventeenth century has been conspicuous in the life of Virginia.

John Randolph, the father of Edmund, held the office of king's attorney, as had his father and brother. It was John who figured in the well-known anecdote told by William Wirt of the examination of Patrick Henry. When the quarrel between the colonists and the mother country came on, he did his best to attempt in Virginia the role of peace maker. Finding this part impossible in those turbulent days, with his wife and daughters he followed Lord Dunmore to England. He there lived the life of an unfortunate and somewhat neglected tory, but retained the respect of his friend, Thomas Jefferson, and the affection of his young and only son, Edmund, who threw in his fortunes with the colonists.

Edmund Randolph early made a reputation as a handsome and eloquent youth, giving prospect of carrying on the family tradition of honourable and distinguished

public service. Recommended by Governor Benjamin Harrison, Richard Henry Lee, Patrick Henry, and Thomas Jefferson, he was adopted by Washington into his military family as aide. While so acting he was appointed by Congress muster-master for the Williamsburg district. This position he declined in order to accept election to the Virginia convention of 1776—the convention which framed the first constitution of his state. Randolph, though the youngest member of the body, was appointed on the committee to prepare the declaration of rights and a plan of government.

His conduct in the convention was well pleasing to his fellow-citizens, so much so that he was elected attorney-general of the new state and also mayor of the town of Williamsburg. While thus serving he was elected to Congress. As a delegate to Congress, Randolph used his influence to assist in securing compliance by his state with the financial demands of Congress.

Randolph attained a most conspicuous position at the Virginia bar. His reputation for eloquence was unsurpassed. The ambition of the mother of John Randolph of Roanoke was that he should be as great a speaker as Edmund Randolph. In his cases, he was frequently pitted against Patrick Henry with results that were not unsatisfactory to the younger man.

On November 7, 1786, Randolph was elected governor—against Richard Henry Lee and Colonel Theodorick Bland. Washington wrote him a generous letter of congratulation. Randolph was much interested in the move to establish a firmer bond of union between the states. He was a delegate to the Annapolis convention. He practically selected the delegates from Virginia to the federal

convention of 1787 and through his earnest insistence finally secured the consent of Washington to serve—a significant achievement.

Prior to the meeting of the convention, he had given attention to the problems which had to be faced. As the most eloquent member of the Virginia delegation and the most distinguished save Washington, he was put forward to propose the Virginia plan. In addition, he prepared a more detailed plan of his own.¹ However, the Constitution as adopted did not seem to him to be sufficiently republican; so, in company with George Mason, he declined to sign it. Randolph believed that there should be a second convention for the purpose of revising the work of the first. This position he held until the meeting of the Virginia convention to consider ratification. However, when it became clear to him that it was a case of union or disunion, he threw his powers and influence into the scale with Washington, Marshall, and Madison, and had no little to do with the ratification of the federal Constitution by Virginia.

When the new government was constituted, Washington gave consideration to the great lawyers of Virginia—Wythe, Pendleton, Henry, Blair, and Randolph. He finally decided to appoint Randolph Attorney-General, writing Madison: "Mr. Randolph in this character I would prefer to any person I am acquainted with of not superior abilities, from habits of intimate association with him." As Attorney-General, Randolph had an embarrassing time. His friend Jefferson, with whom his general sentiments had been and were in accord, had a notion that Randolph should vote in the Cabinet always as he did. It is true that in many important cases—such

as on the unconstitutionality of the national bank and the continued validity of the treaty of 1778 with France—Randolph did agree with Jefferson. However, he did not hesitate to differ from his friend whenever the occasion seemed to justify it. On August 11, 1793, when Jefferson bitterly resisted an appeal to the people on the subject of Genet, he wrote Madison: "R. according to his half-way system between wrong & right urged the *putting off* the appeal. . . . I can by this confidential conveyance speak more freely of R. He is the poorest cameleon I ever saw having no colour of his own, & reflecting that nearest him."² Again he had said: "E. R. found out a hair to split," and was "the most indecisive one [person] I ever had to do business with." "He always contrived to agree in principle with one but in conclusion with the other." He spoke of Randolph's "Anglo-phobia, secret Antigallomany, a *federalisme outrée*, and a present ease in his circumstances not natural." However, Jefferson had to admit that "everything . . . now hangs on the opinion of a single person" and that "his opinion always makes the majority" and as the President agrees with the majority "the Government is now solely directed by him."³

The gist of the matter is that at a time of bitter division in the Cabinet and intense partisan feeling, Randolph was attempting the difficult task of being a neutral. It is not impossible that one of Jefferson's biographers may be right when he says: "The truth is that the Attorney-General was a clear-headed, dispassionate adviser of an excellent shrewdness in matters of international law, and . . . much more often right than either of the extremists between whom he stood."⁴ As Attorney-

General, the first that ever occupied that office, he was a faithful counsellor, an ardent supporter of his chief, an able advocate before the courts. Washington relied on him much and often followed his advice as well as requested him to draft public documents including the President's messages to Congress.

Jefferson, on July 31, 1793, wrote Washington that he desired to retire from the office of Secretary of State at the end of September, and though he was not to retire until the end of the year, had a conversation with Washington on August 6, 1793, anent his retirement and the choice of his successor. Washington said his preference would be Madison. Jefferson urged Governor Johnson of Maryland as a temporary appointment with the understanding that he was to be Secretary of the Treasury later. They talked over various names until finally Jefferson suggested a "par interim" appointment, such as Randolph. Washington said this would create an expectation of keeping it and he did not know that Randolph was fit for it nor what was thought of him. Jefferson told Washington of Randolph's embarrassments and financial expedients. However, Washington who had been dealing with Randolph since Randolph was a boy—dealing with him in both a private and a public capacity⁵—finally, on December 24, 1793, wrote offering him the position of Secretary of State.

Jefferson wrote the appropriate letters to our ministers abroad, to the United States Bank and to foreign bankers that Edmund Randolph was his successor and possessed of the same authority as he had had. In his methodical way, he also prepared a statement about the immediate routine business of the department. The salary

of the Secretary was \$3,500.00, the total expense of maintaining the office, \$9,661.67.

Randolph, despite his poverty and financial entanglements, had many personal qualities that would adorn the office. Wirt said he had "great personal advantages: a figure large and portly; his features uncommonly fine; his dark eyes and his whole countenance lighted up with an expression of the most conciliating sensibility; his attitudes dignified and commanding; his gesture easy and graceful; his voice perfect harmony; and his whole manner that of an accomplished and engaging gentleman."⁶ He was thoroughly trained in the law; he understood French; he was devoted to Washington; as Attorney-General, he had followed, to a certain extent, foreign affairs.

Randolph went into office with an expressed determination of loyalty to the President and of non-partisanship in the administration of his office, and assured Washington "that it shall be my unremitted study to become an accurate master of this new and important business."⁷

Well might Jefferson desire to retreat to private life and well might Randolph have hesitated to undertake the task of Secretary under the circumstances. In addition to the fact that the Cabinet was now made up entirely of Hamilton and his disciples, with Randolph attempting to play the rôle of non-partisan, the embarrassments attending the direction of our foreign relations were such as to call for the greatest ability, wisdom, and tact. No man could expect to administer this office without being subject to the bitterest of criticisms from a large part of his countrymen and without running a

serious risk of a downfall. Jefferson withdrew from the fight, Randolph was destroyed, Pickering was dismissed, and two foreign ministers of distinction and ability had to be recalled from their posts. In addition to the usual troubles facing a neutral country in a time of world war, was the extraordinary difficulty arising from the newness of our country, its military feebleness, its entanglement in a treaty of alliance with France, and the contempt felt by England for its rebellious child. There was likewise the difficulty that our own country-men were not only seriously divided in their opinions as to the best policy to pursue, but were also inflamed with fierce likes and dislikes toward foreign countries.

When Randolph took office, our Government had requested the recall of the French minister, who had so flaunted our rights and the courtesies due to our Government, who had intrigued, enlisted our citizens, fitted out privateers in our waters, elevated French consulates into admiralty courts, and finally threatened to appeal, over the head of the President, to the people of the United States. However, this minister had not as yet surrendered his duties to a successor. The British minister, Hammond, had come in 1791. Thomas Pinckney of South Carolina represented the United States at the Court of St. James, Gouverneur Morris was our spokesman at Paris, William Short and William Carmichael were hopelessly negotiating at Madrid. Likewise, David Humphreys was endeavoring to bring the Dey of Algiers to such terms as would release our captured seamen and allow freedom to our commerce.

One of the first duties which the new Secretary had to perform was to dispose of Genet. Randolph, while favour-

ing his recall, as also Jefferson had done, had opposed his dismissal. His views of Genet's conduct and the grounds on which a recall should be based are contained in a letter, written, as was also one from Hamilton, at the request of Jefferson. From this letter, a portion of which we quote, may be gathered Randolph's views of the grievances which the American Government had against the French minister. These grievances according to Randolph were:

"1. His assurances, that no other commissions should be granted to privateers within the U.S. and the repetition notwithstanding.

"2. The continuance of the consuls within his controul and knowledge, to exercise the functions of the admiralty; his declarations to the contrary notwithstanding.

"3. His sending off the *Little Democrat* against the wishes of the government expressed to him.

"4. His reprehensible language concerning and addressed to the Executive.

"5. His undertaking to reclaim those citizens of the U.S. who had been prosecuted for entering on board French privateers."

Randolph's encounter with Genet personally was brief. On January 23, 1794, he reproved the French minister for failing to address him by his official title; on February 3, he told him that it was unprecedented that a foreign minister should send the President a letter for submission to Congress, that was not open to his inspection; on the 7th he demanded an explanation for the commissioning of a ship.⁸

Fauchet, Genet's successor, had his first interview with Randolph on February 21, 1794. An account of this interview is given in Fauchet's letter to his Government, dated March 21, 1794. It seemed to please him and to be a favourable prophecy of the reception which would be given him by the President. This reception occurred the next day, the President's birthday, Randolph having outlined to Washington the ceremony to be followed in the presentation.⁹ Fauchet's instructions included the disavowal of the conduct of Genet, and his arrest; the disarming of the privateers commissioned by Genet, and the dismissal of all those consuls who had taken part in the arming of these privateers and in the condemnation of prizes made by them. He was told by his Government to see to the execution of the treaties with France and especially of Articles 17, 21, and 22 of the treaty of commerce, concerning the admission of the prizes made by French privateers and the exclusion of those made by the privateers of their enemies. He was to endeavour to secure a reversal of the American refusal to allow the sale of French prizes in American ports. He was to hold back the expedition projected by Genet against New Orleans. He and his associates were to gain the confidence of the President and other members of the Government. Also they were to propose a new treaty of commerce to be based on a more solid foundation than that of 1778.

Fauchet began his work at the first conference with Randolph, that of February 21, which he says was a long one. To the proposal looking to the arrest of Genet and the consuls, Randolph interposed many objections. The law gave no power to the executive to allow it; it

would occasion bloody scenes, as Genet had many friends; and it was recall, and not punishment, that the United States Government demanded. The two men separated agreeing that Fauchet should put this demand in writing. This was done with the result that Randolph and our Government held to their position that the arrest could not be made.

Another matter which in one of these early conversations Randolph brought to Fauchet's attention was the military preparation taking place in Kentucky, preparation of which there was ample evidence. Despite the fact that Genet had been given specific instructions "*d'exciter secrètement les habitants de l'intérieur de l'Amérique à descendre le Mississippi, et à donner l'indépendance aux Louisianais,*" Fauchet pretended to be ignorant of any projects which were in conflict with strict neutrality and assured Randolph, in actual truth, if there existed any he was charged to put a stop to them.

Likewise, on the ground of the need of relieving "the necessities of the inhabitants of San Domingo, who have taken refuge in this United States since the burning of the Cape," he advocated payment of our debt to France of a million dollars within six months. The decision of the President on the advice of the Cabinet was to pay him the instalments as they regularly fell due, viz.: 1,500,000 livres on September 3 and 1,000,000 livres on November 5, 1794.¹⁰ Randolph proposed that if Fauchet insisted on his application, it be forwarded to Congress. This was done and a favourable resolution was reported in the House by Madison only to be rejected by the Senate.

It is interesting to get Fauchet's early impression of

Randolph and of the method used by the Secretary of State. "This premier seems to me to be entirely devoted, he showed to me the greatest desire to tighten the bonds that united the two nations and [exhibits] the greatest confidence [that this will be the result]. Free and friendly conversations anticipate our measures; these are arranged and agreed upon in advance. We communicate to each other our letters and replies before sending them officially, and consult always on whatever can produce a good or a bad effect for the two nations. I think I can assure you that this system has succeeded perfectly." A month later, in the famous despatch No. 3, dated June 4, 1794, he advised his Government that "This Mr. Randolph is no doubt an excellent man, very much a partisan of our Revolution. But I believe him to be of a weak character. It is very easy to penetrate his secret when one stirs him." He, however, later said of the man whom he ruined that Randolph had made "false confidences." Randolph for his part wrote Washington on February 23 that "Fauchet did not see Mr. Morris before his departure; barely gave a tolerable account of his not doing so; was ignorant of the name of his residence; and almost of its position—he said, that he understood it to be in the country."¹¹ In a letter of May 22, 1794, Randolph wrote Washington that "Fauchet did not appear to know Franklin, nor his character; nor yet to feel any attachment to him."¹²

His method of dealing with Fauchet is described in his *Vindication*, written after Fauchet had caused Randolph's resignation: "The French minister was unquestionably sent upon an errand similar to that of every other foreign minister; to watch the movements of our

government, the spirit of the people, and the events which arise. The Secretary of State is, on his part, to procure for the President from the minister every possible information of the affairs of France. It would be ridiculous and unavailing to pursue this object, but by the establishment of a confidence in the minister's breast. The surest mode of accomplishing it, was to inculcate the good-will of our government towards his country's cause; to repel his occasional complaints; to act candidly with him; and to be as frank in communications as our neutrality and the real secrets of the government would permit. Hence it has been a fixed usage for the Secretaries of State to seek conversations, or to continue them, with the French and indeed every other diplomatic resident."

While Randolph and Fauchet were exchanging these conversations and arguing about the violation of American or French rights under the treaty or about the law of nations, a change had been made in our minister to France. In return for the recall of Genet, the French Republic requested on our part the recall of Gouverneur Morris. One of the early duties of Randolph was in view of a resolution of the Senate to examine the correspondence of this minister. Randolph declared that there was less that was objectionable in this correspondence than he had been led by others to believe, and that outside of a few expressions such as referring to his "court" he saw little objection to it.¹³ When it became necessary, as an offset to the recall of Genet, to recall Morris because his anti-republican sympathies made him *persona non grata* to the revolutionary government of France, Washington wrote him in the gentlest terms, and Randolph

wrote Fauchet that the action taken with reference to Morris would have been the same "in relation to any person."¹⁴ As a matter of fact, Morris had been relieved at the substitution of Randolph for Jefferson as Secretary of State, on account of the fact, according to Morris's biographer, Roosevelt, that Jefferson was dilatory in answering Morris's letters as well as for other reasons. Randolph wrote Fauchet on April 21: "We have been anxiously seeking a successor [to Morris] who may be as acceptable to the French Republic as the successor of Mr. Genet is to our own."¹⁵ In answer to the President's requests for suggestions of names, Hamilton included in his list Randolph.¹⁶ Randolph preferred Livingston, others wanted Burr. Finally, Monroe was chosen. The choice of Monroe was very pleasing to Fauchet who regarded him as "a man whose talents, principles, and patriotism of the purest kind will be dear to the true friends of liberty." Under instructions which will be outlined later, Monroe proceeded to France to secure a redress of our grievances and the preservation of our rights.

If the situation found by Randolph with France was serious, that with England was more so. England still kept our western posts which in the treaty of 1783 she had promised to give up, failed to pay for our Negroes carried off in violation of the treaty, preyed upon our commerce, infringed our neutral rights. Just prior to Randolph's taking office, a new provision ordinance, dated November 6, 1793, had been published. This ordinance made all ships carrying the produce of French colonies or "provisions or other supplies for the use of such colonies," subject to seizure. It was a flagrant vio-

lation of the rights of a neutral, and any submission to it on our part was a just grievance to France. In addition to the non-execution of the treaty with the United States, the interference with our rights as a neutral, and the provision order, as is usually the case when feelings are otherwise strained, new incidents of an irritating nature came up. On February 10, 1794, Lord Dorchester, formerly General Carleton of the British Army in America during the American Revolution and now the Governor of Canada, made a speech to a delegation of Indians hostile to the United States. "He told them that the United States had not kept their treaty, that the settlements in the disputed Northwest Territory were unauthorized, that it was probable that the British and the Americans would be at war within a year, when the Indians might recover their lands with the improvements."

Further, in addition to making difficult negotiations between the Indians and representatives of the United States, John G. Simcoe, Governor of Lower Canada, sent a detachment to the rapids of the Maumee, sixty miles south of Detroit, and clearly within the bounds of the territory of the United States, with the ostensible purpose of protecting Detroit, which was in British hands, from the army of General "Mad Anthony" Wayne, now in the Indian country. Washington ordered Wayne to reduce this new fort if it were in his way.

Randolph, therefore, had complicated problems to handle both with the British minister and through Thomas Pinckney, our minister to England. These difficulties were made more difficult by the fact that the Secretary of the Treasury, Alexander Hamilton, still

presumed to regard himself as Prime Minister, responsible for the conduct of our foreign affairs as well as for the Department of the Treasury, keeping directly or indirectly in touch with the British minister here and with our representative abroad. Jefferson had keenly resented this interference. Randolph was to feel it also.

The correspondence with Hammond was a bit tart—and Hamilton and Washington both advised Randolph to tone his part of it down a little. Randolph protested earnestly against the British provision order and also combated ably by reference to treaties and to writers on international law every position taken by Hammond in defense of it. He complained against Dorchester's speech of February 10, 1794, and also against Simcoe's attempt to establish a fort at the foot of the Maumee rapids. Hammond, without denying either of the incidents referred to, on his part complained of certain alleged aggressions on the part of the state of Vermont and of the various grievances occasioned the British Government by the schemes of Genet and the French, which had not been redressed by the United States. Randolph diligently explained the position of the United States on the matters against which Hammond complained and returned to the speech of Dorchester. Meanwhile no progress was made in the solution of the serious issues of difficulty between the two countries—the in-execution of the treaty of peace and the many problems involving neutral rights. Congress was discussing, in bitter debates, retaliatory measures, which would have made war inevitable.

CHAPTER II

THE JAY MISSION TO LONDON

AND so ministers continued to write back and forth about the non-execution of the treaty of 1783, neutral rights, and duties, the infringement of each country on the rights of the other, without arriving at an understanding on any important subject. The two countries were steadily and surely drifting into war; the prospects were that Lord Dorchester was right.

In consequence, a special mission for the purpose of attempting to arrange a settlement with Great Britain was decided upon and John Jay of New York was sent as special envoy to transact this business. The steps by which this was brought about, how Jay came to be chosen, and the part of Randolph in these decisions remain to be described.

Monroe, then Senator, on March 16, 1794, wrote Jefferson at Monticello, that "it was talked of by the fiscal party to send an Envoy Extraordinary to England to complain of the injuries and seek redress, and that H. was spoken of for this mission." Randolph "at once made the proposal to the President" and thus "made the envoy policy his own before the 'fiscal party' had arranged their scheme." On the 6th of April, 1794, saying that "I was among the first, if not the first, who suggested this Mission to your consideration, and I am still its advocate," he declared that he had recommended it:

“Because the representations made by your Minister in Ordinary, seemed to rest on the British files among the business, which, if ever entered upon, would be entered upon at extreme leisure: 2. Because the recent accumulation of injuries called for pointed notice: 3. Because the merchants and insurers would suspect an inattention in Government, if their great interests were left to the routine and delays of common affairs, and would, on the other hand, be highly gratified by the movement: 4. Because the British nation, without whose affection the British Minister can do nothing of any importance in war, ought to be retained, by the strongest demonstrations, in the persuasion that we mean peaceable negotiation, rather than war: and 5. Because a distinguished character, sent fresh from the feelings of the United States, would with more confidence assert and with more certainty impress.”

However, he now recommends a postponement of the mission until Congress shall have adopted measures giving “nerve to our affairs.”

Meantime, the “fiscal party” had indeed been endeavouring to arrange everything. According to F. C. Hamilton’s *Republic*, Alexander Hamilton had conferred first with Cabot of Massachusetts, then Cabot had conferred with Ellsworth of Connecticut, King of New York, and Strong of Massachusetts. By them the plan of the mission had been agreed upon. This plan was to create the mission and to select Hamilton as the envoy. Ellsworth presented it to Washington. Likewise, Robert Morris, one of the President’s best friends, conferred with him about the matter.

The plan of the "fiscal party" was to have difficult sailing. Monroe, whose position has been indicated by his letter to Jefferson, quoted above, wrote the President, April 8, 1794, a remonstrance against the appointment of Hamilton and a request for an interview on the subject. Randolph, who agreed with Monroe in the matter of the envoy, proposed to the President a tart answer, intimating that Monroe was interfering in advising the President before a nomination was made to the Senate.

The President, however, was more tactful, and answered Monroe personally, suggesting that he put any objections to Hamilton in writing. Likewise, a long and severe letter was received by Washington from John Nicholas, Randolph's brother-in-law, giving in detail his objections to Hamilton. Jefferson also had given his opinions to Monroe in a letter dated April 24, 1794. Randolph discussed the matter with Hamilton himself.

Word also got out that Randolph had approached Madison, with a view to sending him as envoy to London and also that the appointment of Jefferson was desired by the Democratic party, and "that great efforts had been made to induce the senators from Georgia, in a certain contingency, to defeat a nomination." The necessity of Hamilton's being at liberty to use his influence with Washington became apparent. So Cabot declared "we must let the little Lion loose."

On April 14, Hamilton, in a letter outlining the whole situation before the country, said he wanted the President to drop him from consideration. Then follows this sentence: "I beg leave to add that of the persons whom you would deem free from any constitutional ob-

jections Mr. Jay is the only man in whose qualifications for success there would be thorough confidence and him alone it would be advisable to send."

Though Hamilton's influence with the President was powerful and prevailed, the nomination of Jay was not to be accepted without earnest protest. Randolph, personally friendly to Jay, objected to the appointment on the ground that "it was a bad precedent that a chief-justice should be taught to look up for *executive* honours, flowing from the head of it, while he retained his judicial seat." On April 28, 1794, Randolph wrote the President, suggesting that Jay resign as Chief Justice.

There were those whose opposition to Jay was not of this comparatively mild character. Monroe, who was opposed to the appointment of Hamilton, was likewise not in favour of the appointment of Jay. It was Jay who had proposed to surrender the navigation of the Mississippi for a period of twenty-five years. It was thought also that his strong leanings toward England during the negotiations of 1782, and his "violent and unreasonable" prejudices against France made him unsatisfactory to the partisans of that country. Unfortunately, Jay, as Secretary of Foreign Affairs under the Confederation, had gone over the subject of the violations of the treaty of 1783. At that time, as has been explained in the preceding volume, he had palliated the conduct of the English in carrying off American Negroes and had justified the British position on violations of the treaty, particularly as to their retention of the western posts.

In view of such a record it is easy to understand the opposition to the appointment of Jay as our advocate

in negotiations covering the very points on which he had committed himself adversely to the American contentions.

Madison says that the appointment of Jay would have been difficult "but for some adventitious circumstances."¹⁷ Prior to the nomination, an interview had been held with Jay by Hamilton, Strong, and "other leading senators, the object of which was to induce his immediate acceptance of the mission." He was requested to indicate to the President his unwillingness to serve if his mission were preceded by hostile measures enacted by Congress. The object of this plan was to prevail upon the President to embody in the message of nomination a suggestion adverse to such Congressional measures. The message did not contain any suggestion of the character desired. It did, however, attempt to save the feelings of Thomas Pinckney, the regular minister in London, who was not unnaturally to be somewhat pained by the nomination of a special envoy.¹⁸

The mission determined upon, and Jay selected, his instructions had to be written. This task was the work of the Secretary of State—in consultation as usual with the President and members of the Cabinet. Four days after the nomination of Jay, Hamilton presented to the President; "Points for consideration in his instructions."¹⁹ These were placed in the hands of Randolph. Randolph presented on May 4 his own draft to Washington. One of the matters of strong difference of opinion was whether eventual powers of commercial negotiation should be conferred on Jay. Those who were responsible for Jay's nomination urged the negotiation of a commercial treaty. Randolph was opposed to this. The other members of

the Cabinet favoured giving Jay powers to cover the negotiation of a commercial treaty.

Randolph's views were expressed to the President under date of May 6, 1794, as follows:

"1. To permit such a treaty to be signed by Mr. Jay, and transmitted for ratification, is to abridge the power of the Senate to judge of its merits. For according to the rules of good faith, a treaty, which is stipulated to be ratified, ought to be so, unless the conduct of the minister be disavowed or punished.

"2. If he be permitted to sign a treaty of commerce, no form of expression can be devised, to be inserted in it which will not be tantamount to a stipulation to ratify, or leave the matter as much at large, as if he had no such power.

"3. Tho' I believe, the people of the U.S. desire a proper treaty of commerce with G. Britain; and we could enumerate so many articles, as to insure their approbation; yet am I persuaded, that no man can undertake to say, that they would be contented with one or two articles only; as is proposed by the gentleman."

Nevertheless, the instructions as prepared by Randolph, with advice from Hamilton²⁰ and others contained these eventual commercial powers.

The instructions, drawn and signed by Randolph and approved by him with the exception of the portion dealing with eventual commercial powers, should be summarized here. Jay was "to keep alive in the mind of the British minister that opinion which the solemnity of a special mission must naturally inspire, of the strong

agitations excited in the people of the United States, by the disturbed condition of things between them and Great Britain; to repel war, for which we are not disposed, and into which the necessity of vindicating our honor and our property may, but can alone, drive us; to prevent the British Ministry, should they be resolved on war, from carrying with them the British nation; and at the same time, to assert, with dignity and firmness, our rights, and our title to reparation for past injuries." He was to press for compensation for injuries inflicted on our commerce under authority of the instructions empowering the seizure of provision ships. He was "to draw to a conclusion all points of difference between the United States and Great Britain, concerning the treaty of peace." Particular emphasis was placed on the holding of our posts by the British and the intrigues entered into by British agents with the Indians. It was left to Jay's discretion, whether the subject of a commercial treaty should be taken up with the British Ministry. In case it should be discussed, among the nineteen general objects specified were to be "reciprocity in navigation, particularly to the West Indies and even to the East Indies"; "free ships to make free goods"; "proper security for the safety of neutral commerce in other respects; and particularly, by declaring provisions never to be contraband, except in the strongest possible case," etc.; "no stipulation whatsoever is to interfere with our obligations to France"; and the treaty of commerce was "not to continue beyond fifteen years." Jay was to have discretion in view of distance and the instability of public events to modify these recommendations, except in two cases—the first that we "will not derogate from our

treaties and engagements with France"; second, that no treaty of commerce be signed which does not grant us reciprocal advantages in the trade with the British West Indies.

Jay was commissioned on April 19, sailed May 12, arrived June 8, and began the negotiations which ended on November 19, with the signature by him and Grenville of the so-called Jay Treaty.

CHAPTER III

THE TREATY OF SAN LORENZO

BEFORE continuing the account of the mission of Jay and also that of Monroe, it is necessary to bring up several other matters which had been preparing and which came to a head almost simultaneously with the work of John Jay.

Our affairs in Spain had been in an unsatisfactory state since 1783. Jay's unsuccessful negotiation over the southern boundary question and the navigation of the Mississippi 1785-1787, has already been described in the previous volume of this series.

While Jay was in England negotiating for American rights from the point of view of the American friends of England, Randolph was endeavouring to work out some plan to secure to America definite assurances that the rights of our western Americans would be protected against Spain.

The culmination came in a very important interview between the Spanish minister, Mr. Jaudenes, and Randolph, held August 25, 1794. Of this conversation he made a memorandum which was sent on August 28 to Jefferson, with the letter quoted below. The conference was held at Randolph's request for the purpose of securing an explanation of a letter written by Jaudenes on August 16.²¹

Randolph asked questions designed to bring out the nature of the objections by Spain as to insufficiency of the powers of our commissioners, objections really de-

vised by Spain to procrastinate and to delay any definite settlement. Jaudenes had stated, on behalf of his government, that Carmichael and Short were possessed of powers insufficient to cover all the matters of interest between the two nations. It seemed to Jaudenes, though with no just ground for the view, that the policy of Jefferson had been to negotiate for the navigation of the Mississippi alone; his Catholic Majesty's Government would never treat but upon all subjects of difference between the two countries. Jaudenes was of the opinion that "all the States were not solicitous for the Mississippi; that a majority were against it." Randolph having combated the view that the powers of the negotiators were not adequate, finally demanded to know what Jaudenes meant "by the requisition of a minister, whose Character, Conduct, and Splendour, would render them proper, etc." Jaudenes then replied he had objected to Carmichael and accepted him and Short only when told by Mr. Jefferson that they had been nominated by the President, and "just as he," Jaudenes, "was about to say to Jefferson that Mr. Pinckney would be acceptable."

He then explained the words character, conduct and splendour, [desired by him for the minister from the United States to Spain]. "By character he meant a Diplomatic grade (no matter what) united with full powers for all objects; by conduct, a proper attention to the Court and a proper behaviour in the management of the negotiations; by splendor, personal dignity and self-respect. Splendor as the effect of honorary birth, or proceeding from such considerations was not included in his expression."

Randolph then asked Jaudenes "if the negotiation

was at a stand." He answered that he presumed it was. The memorandum continues:

"Mr. Randolph disclaiming all knowledge of what the President's ultimate opinion would be, but desirous of knowing whether if another character was to be sent to Spain, the old delays would be repeated, was assured by Mr. J., that in his opinion, the business might be immediately settled either by a treaty, signed and executed or by a statement of the terms, upon which a Treaty might be concluded."²²

Out of this interview grew the letter to Jefferson offering him the post of envoy-plenipotentiary at Madrid. The letter to Jefferson is of interest as further giving Randolph's view of the actual situation. Proceeding to the subject he says:

"The delays, and evasions which you know to have been practiced towards our Commissioners at Madrid, have at length terminated in an absolute stagnation, as you will discover from the enclosed letter of Mr. Jaudenes."

"The people of Kentucky," he proceeds, "either continuing or ignorant of the consequences, are restrained from hostility by a pack thread. They demand a conclusion of the negotiation; or a categorical answer from Spain. The tenor of the assurances, which have proceeded from you, has been repeated to them by me, with the addition of any subsequent events, which ought to be divulged. The President has lately determined to send a special agent to develop the true situation of the business to the government of Kentucky; and we have reason to expect, that Colo.

James Innes, of Virginia, will soon come on hither to acquire the information, necessary to be carried to that State."

"But prompted by the zeal, with which he has always pursued the free navigation of the Mississippi, he conceives it to be advisable to adopt a further measure, which while it is due to the emergency, may subdue or at least hold in check the irritation of Kentucky, already arrived to an alarming height. He has therefore resolved to send to Madrid a special Envoy, charged with powers, adequate to the occasion."

Randolph explained that the separation from home would be likely to be of short duration, and desired to be authorized to tell the President that the appointment would not be unacceptable to Jefferson. He also enclosed a letter to Patrick Henry which Jefferson was requested to send to Richmond in case he found it impossible himself to accept the commission.²³

To this letter Jefferson replied, on the day on which it was received, September 7, 1794, that he had "Rheumatism" and that "no circumstances . . . will ever more tempt me to engage in anything public."

Both Jefferson and Henry having declined, Thomas Pinckney, our minister in London, was notified that he would be nominated. "The business," Randolph said, "relates to the Mississippi; will be temporary; and under present circumstances probably not dilatory. You will necessarily conclude that your return to London upon your former footing will be a thing of course." Pinckney's commission was dated November 24, 1794; he arrived at his post on June 28, 1795. His instructions were to be the same as those which had been given Messrs. Car-

michael and Short,—March 18, 1792. They were to insist on the thirty-first parallel of latitude as the boundary between Georgia and Florida and the midchannel of the Mississippi as the western boundary of the United States. They were to insist on the right of American citizens to navigate the Mississippi River “in its whole length and breadth, from its source to the sea.” They were likewise to demand for our ships and cargoes freedom from visitation and the payment of duties and such conveniences ashore as would render our navigation practicable. We were willing to make a commercial treaty either on the basis of exchanging privileges of native citizens—that is, that the citizens of one in the possessions of the other should have the same rights as native citizens—or those of the most favoured nations.

Before Mr. Pinckney’s arrival in Spain, the Spanish commissioner, Jaudenes, had, on March 28, 1795, presented tentatively to Randolph an outline of the treaty which his government would probably be willing to agree upon—boundaries, “as favorable to the claims of the United States as may be compatible with his [Majesty’s] treaties with the Indians”; “the navigation of the river Mississippi, subject to such restrictions as may be demanded by the interest of his subjects”; “in return for these concessions . . . a substantial treaty of alliance . . . and a reciprocal guarantee of his [Majesty’s] own possessions and those of the United States”; the arrangement of questions of trade “on a footing of reciprocity.”²⁴

The successful conclusion of Pinckney’s mission, though culminating a few months after Randolph’s retirement, really belongs to the story of his administra-

tion of the office of Secretary. Pinckney resented the effort of the Spanish minister, Godoy, to delay negotiations until the informal suggestions of March 28, 1795, should receive a formal reply. He declined to commit our Government to any alliance or mutual guarantee of possessions. He refused a proposal for a triple alliance between the United States, Spain, and France—the latter two countries having made peace. Finding also that the Spanish Court, despite the earlier signs of favourable negotiations, professed not to be willing to sign a treaty except under conditions unfavourable to the United States, he demanded his passports. As a result Godoy quickly came to terms and signed, on October 27, the treaty of San Lorenzo. The boundaries between Spanish possessions in America and the United States were established according to the treaty of peace between the United States and Great Britain; the navigation of the Mississippi from its source to its mouth was assured to citizens of the United States, and the right of deposit at New Orleans was granted for three years; each country was to restrain the Indians within its own boundaries; a joint commission was to be appointed to meet in Philadelphia and adjudicate spoliation claims made by the citizens of the United States; the principle that free ships make free goods was accepted, and a liberal non-contraband list was adopted.

To the period of Edmund Randolph belong, also, the final stages of the negotiation which resulted in peace with the Dey of Algiers. The reader has already noticed the unsuccessful efforts made under Jay's and Jefferson's régimes to settle affairs with that state.²⁵ While David Humphreys, commissioned to carry on the ne-

gotiations, was in Paris with a view of securing the cooperation of the French, Joseph Donaldson, Jr., consul for Tunis and Tripoli, on September 5, signed a treaty with the Dey. We agreed to pay down \$763,000.00 and \$24,000.00 a year, in addition to the customary presents. Further embarrassments resulted from a delay in the payment of the money promised, which made it necessary for us to promise a frigate worth \$100,000.00, in addition to the terms agreed upon by Donaldson. All told this very temporary peace cost us about \$1,000,000.00.

We have left Monroe in Paris. Instructions for his conduct in that country which had been written by Randolph and dated June 10, 1794, avowed the friendship of the President for France, declaring that he had been "an early and decided friend of the French Revolution," that he was "immutable in his wishes for its accomplishment." Our faithful pursuit of a policy of neutrality was asserted and it was stated that "we mean to continue the same line of conduct in the future; and to remove all jealousy with respect to Mr. Jay's Mission to London, you may say, that he is positively forbidden to weaken the engagements between this country and France. *It is not improbable that you will be obliged to encounter, on this head, suspicions of various kinds. But you may declare the motives of that mission to be, to obtain immediate compensation for our plundered property, and restitution of the posts.*"

Monroe was told that if anything were brought up by the French with reference to a treaty of commerce, "you may reply that it has never been proposed to us by Mr. Fauchet."

The embargo which had been laid by Congress on

shipping in American harbours, was to be defended, as directed against England. It "was made general merely because, if it had been partial against her, it would have amounted to a cause of war." Also when the subject of our embargo was made a matter of complaint, the embargo laid at Bordeaux was to be the subject of complaint on Monroe's part. He was to insist on compensation "for the captures and spoliations of our property, and injuries to the persons of our citizens, by French cruisers." Also Monroe was to endeavor to secure reimbursement for the fifteen thousand dollars which Congress, in addition to private charity, had advanced for the relief of inhabitants of San Domingo who had come to America "after the disasters of the Cape."

"To conclude," Randolph says, "you go, sir, to France, to strengthen our friendship with that country; and you are well acquainted with the line of freedom and ease to which you may advance without betraying the dignity of the United States. You will show our confidence in the French Republic without betraying the most remote mark of undue complaisance. *You will let it be seen that, in case of war with any nation on earth, we shall consider France as our first and natural ally.* You may dwell upon the sense which we entertain of past services, and for the more recent interposition in our behalf with the Dey of Algiers."

Before hearing from Monroe, Randolph wrote him, on July 30, 1794, again urging him to take up the problem of securing to the United States, on her indebtedness to France, credit for the part of the \$15,000 appropriated by Congress which was expended on the refugees from San Domingo. Randolph had applied to Fauchet but

thought this French minister would hold to his ground of opposition to the appropriation of French money for the relief of anti-republicans. He asked Monroe to inquire into the reports of the imprisonment of American citizens in France. He instructed him to express appreciation for French efforts to arrange matters with the Dey of Algiers and to hope for a continuance of this assistance. Monroe was told to press the case of the vexation of our commerce. Randolph confessed himself as still disturbed by the embargo at Bordeaux.

Monroe, in a letter dated August 15, gave an account of his arrival and ten days later described his reception. Provoked by a delay in his reception by the Committee, he wrote directly to the Convention and was received by them in a memorable session. He read a fulsome address and was embraced by the President of the body. For this he was later reproved by Randolph; but in the delayed and difficult communications between American ministers abroad and their home government Randolph's letter was dated December 2, over three months after the incident occurred. In the meantime, Monroe had made efforts to promote most of the ends contemplated in his instructions.

Randolph, not having heard from him, wrote him again on September 25, reinforcing briefly the letter of July 30. He also informed Monroe of the Whisky Rebellion and the steps which had been taken by the Government of the United States. His opinion of the state of public sentiment is not without interest. "The spirit," he says, "which the states have manifested is astonishing. Throughout Virginia, to favor the insurgents would be disgrace and actual personal danger."

In view of such events and the opinions later expressed by him, his comment on Fauchet and his view of our Government and of Jay's mission is worth recording: "One thing only is certain, that he [Fauchet] supposes a British tendency to prevail in some members of our Government [Randolph had the same opinion], and that the supposition is a copious theme with him. You are possessed of all the means of confronting this idea. You know how Mr. Jay is restricted; and I must acknowledge to you, that, notwithstanding all the pompous expectations announced in the gazettes, of compensation to the merchants, *the prospect of it is, in my judgment, illusory; and I do not entertain the most distant hope of the surrender of the western posts.*²⁶ Thus the old exasperations continue, and new ones are daily added. Judge, then, how indispensable it is that you should keep the French Republic in good humor with us." It is very clear that the American Government did not care for Monroe to be too fully or accurately informed as to Jay's powers. Monroe proceeded to cultivate French friendship, possibly overdoing it; but being instructed and urged to maintain such friendship, and being assured of the restricted nature of Jay's instructions and told that the prospect of a settlement with Great Britain was illusory, it is small wonder if he went too far. He secured promises from the French Government that they would execute the treaty of 1778 with us, obtained a modification of the treatment of our commerce by France, and got Thomas Paine out of prison. But as rumours flew about with regard to Jay's mission and Jay's treaty, Monroe found his troubles increasing and his difficulties grown greater.

CHAPTER IV

RANDOLPH AND THE JAY TREATY

WE must now turn to the negotiations of the Jay Treaty and to Randolph's part in those negotiations.

It is difficult to read the correspondence of Randolph and Jay in the light of other correspondence and known facts without sympathy for Randolph. Indeed it is difficult for anyone attempting to study the problem of Randolph's pathetic career to do so without a real feeling of sympathy. In the case of the Jay mission he was, as Secretary of State, dealing with a man in whose fitness for the part he did not believe, whose political attitude he did not share.

Randolph wrote the formal letters of correspondence—faithfully, intelligently, accepting such aid and suggestions from others as seemed right. But one has a feeling in reading the letters passing between the two men that it was Randolph that was on the defensive and not Jay; sometimes that it was Jay giving instructions and not Randolph. We know—and Randolph knew—that Jay and Washington had private correspondence which Randolph did not share. It is not impossible likewise that Randolph knew that Jay was in private correspondence with Hamilton²⁷—but how vital Hamilton's correspondence was Randolph probably never knew.

It was not that Hamilton wrote the instructions or formal letters for Randolph to sign. It was Washington's

custom to secure from different members of the Cabinet written suggestions and drafts of the important papers. Randolph had written the neutrality proclamation, drafts of presidential messages and the like. In such competitions as this he presented his own views earnestly, effectively, though accepting and acting on the decision of the administration of which he was a part. But it was a different matter to deal with a man who acted with a feeling of real responsibility to others, whose real instructions were not known by his titular superior. And added to this was the fact that months would pass between instructions or suggestions from the State Department to the man on the field—during which time the whole matter in question might be settled in a way different from the advice which later arrived. Such was actually the case—Jay's Treaty had been signed before Randolph's criticism of the preliminary drafts could reach the envoy for his guidance. Under the letter of his first instructions Jay was, except in certain particulars, turned loose. He proceeded to go ahead in that spirit. Randolph did his best to keep him informed about the situation in this country—his correspondence with Hammond and the Whisky Insurrection in particular. Jay wrote variously and respectfully though he sometimes pleaded that he was too busy with his negotiations to write fully. He wrote in a similar vein to Washington also.

Jay was immediately and constantly impressed with the courtesy with which he was received. He was sure of the friendly attitude of Grenville. He was particularly anxious that nothing occur in America during the progress of his mission which would complicate matters.

He hoped Randolph would continue to be patient with Hammond and put him thereby in the wrong. He was aware of the importance to the public of the treaty, yet pleaded for a fair opportunity.

To Washington he wrote that the Secretary's letter to Monroe and the latter's speech to the Convention had produced "a disagreeable sensation" in England. To Hamilton he wrote in the same tone.

The letter of Randolph to Monroe to which exception was taken was in pursuance of a resolution of the House of Representatives. The portion to which objection was made follows:

"The President of the United States has consigned this honorable and grateful function to the Department of State. In no manner can it be more properly discharged than by seizing the occasion of declaring to the ally of the United States, that the cause of liberty, in the defense of which so much American blood and treasure have been lavished, is cherished by our republic with increasing enthusiasm; that under the standard of liberty, whensoever it shall be displayed, the affection of the United States will always rally; and that the success of those who stand forth as her avengers will be gloried in by the United States, and will be felt as the successes of themselves and the other friends of humanity."

Jay's frank statement to him on September 13,²⁸ that this letter had caused an "uneasy sensation" in London, brought from the Secretary, on November 12, an interesting reply in which he not only explains the offensive

communication, but defends himself against charges of anti-British feeling. He said that he was "among the first, who expressed a solicitude for the appointment of an Envoy to Great Britain." He believed in the "immense value" of harmony between the two countries. He had worked to prevent war and to preserve perfect neutrality. Jay's mission itself was "the most striking example of amity on our part." As for the tone of the letter, if there was any fault, this fault was in the House of Representatives, whose resolution he was merely carrying out.²⁹ Randolph's defense was indeed rather laboured. No doubt he did interpret properly the intention of the House of Representatives. But he was not subject to the instructions of that body and need not have used language capable of causing trouble elsewhere.

News of the remonstrance against his expressions leaked out and an article appeared in the *Aurora* severely attacking Jay. For fear that the envoy might think it inspired by himself, Randolph wrote him, on November 19, a letter protesting his innocence vehemently and too much. He admitted that he had inquired of several members of the House—as was perfectly reasonable should be the case—whether he had in his letter "transgressed the purpose of their House."³⁰

The first full account of the progress of the negotiations was contained in the letter written by Jay on September 13. It contained drafts of a proposed treaty by Grenville and by Jay. Randolph answered it, November 12, giving tentative strictures on Grenville's draft. The treaty was signed on November 19. Randolph wrote again on December 3, and on December 15, in the latter making detailed criticisms of Grenville's proposals.

To indicate the difficulty experienced by Jay on account of the opinions which he had imbibed and expressed while Secretary for Foreign Affairs under the Confederation, it is only necessary to refer to that portion of his letter of September 13 dealing with the question of payment for the Negroes. He reported that to his insistence that the carrying off of the Negroes was the first aggression, Grenville had contended that the meaning of article seven in the treaty of peace was an engagement on the part of the British not to carry off any Negroes or other property of the American inhabitants; that every Negro like any horse that strayed into the British lines became British property, "therefore ceasing to be American property" and "the exportation thereof was not inhibited by the stipulation in question." After further arguments, Jay confessed to Randolph that Grenville's "construction of that article had made an impression upon my mind, and induced me to suspect that my former opinion on that head may not be well founded." His former opinion was that although the action of the British was less liable to censure than many thought, it was nevertheless in violation of the treaty of peace. Jay's sympathy with the action of the British made him ready soil for Grenville's argument.

Randolph, too late to be of any service, in answer to Grenville's contention held "that a property is acquired in moveables as soon as they come within the power of the enemy, is acknowledged. But it will not be denied that rights, even in moveables, acquired by war, may, by the treaty of peace, be renounced. In this instance, there was great reason for such a renunciation. Negroes were not, like moveables in general, difficult to be dis-

tinguished. They carried an infallible mark. British debts were stipulated to be paid, and the States in which the mass of them lay, depended for their payment, principally, on the culture of their soil, and, for the culture of their soil, on this species of labor. As property, the British Government could not have been tenacious of Negroes; and it may, therefore, be supposed, that, in this view, they were so indifferent as to be the more easily given up."

Randolph proceeded to hold that "the cessation of war implies the cessation of further depredations; the renewal of depredation would have been a renewal of war." He also animadverted on that portion of Lord Grenville's argument in which he had claimed that a different construction from his involved doing what was "odious." "The construction is not odious," Randolph said, "because the British Government hate slavery. No, sir, they established it in the United States, while colonies; they continued the importation of slaves against the will of most of the States; it exists, by their authority, in many of their foreign dominions." Randolph reminded Jay "of the anxiety of many parts of the United States, upon this subject"; he told him that he had "it greatly at heart that your negotiation may not be encumbered by any objection which may be anticipated."

Randolph also expressed himself strongly on the proposal of Lord Grenville for the prolongation of the period for British retention of the posts till June, 1796, instead of setting the date a year prior to that as proposed by Jay. Randolph further pointed out various defects in the commercial project of Lord Grenville, particularly

that part relating to our trade with the West Indies which was substantially to be incorporated in the twelfth article of the treaty as signed by Jay.

But these criticisms were unavailing. Jay acting under his very broad powers had finished his work, not waiting for the views of the Secretary of State and the President to reach him. Nervous, afraid that something adverse would happen, anxious to get through, too busy to keep his government fully and promptly informed, Jay rushed on. He retreated from the stronger ground which he occupied on September 30, in a draft submitted by him on that date. This draft Mr. Bemis, the author of the monograph on "Jay's Treaty," was unable to find either in the files of the State Department or in the published or unpublished papers of Jay, but he found it in the archives of England. Read side by side with the treaty as signed by Jay, says Mr. Bemis, "it indicates a stupendous retreat by the American plenipotentiary." "It would have been a most embarrassing document for the Federalists, or for Jay individually, to have had submitted to the Senate. It is doubtful whether any person outside of the Foreign Office, except Jay, ever saw the document."

Jay's uncertainty had justified all the fears of the Republicans—he had not made a stalwart advocate of American interests.

As Hamilton had attempted to overreach Jefferson, and was overreaching Randolph, so he succeeded in overreaching Jay and the interests of his country.

Due doubtless to the instance of Randolph, the fifth article of Jay's instructions contained a reference to "the possibility of sounding Russia, Sweden, or Den-

mark as to an alliance on the principles of the Armed Neutrality." Randolph was informed from his own official files as to the armed neutrality, but as to Russia's relation to it he was misinformed. He had the notion in his mind that we could succeed with Great Britain better should we threaten to join with other neutral powers leagued to protect neutral rights. Pinckney had twice communicated to Randolph a proposal from the Swedish minister at London and later complained that he had received no reply.³¹ But Randolph's hands were tied. The other members of the Cabinet, at Hamilton's instigation, had come to adverse conclusions.³² In consequence, Randolph, while still holding strongly to his own opinion, suggested to the President that he let the matter rest for the present.³³ In view of the latter charges against Randolph to the effect that he talked imprudently with the French minister the following revelations of the activities of Hamilton are almost startling.

Ten days previous to Jay's draft of September 30,—which, as has been pointed out, took so much higher ground for American rights than the treaty as actually signed—Grenville, says Mr. Bemis, referring to British archives, received from Hammond in America a dispatch which gave him assurance that America was not likely to join an armed neutrality. Hamilton had told Hammond "with great seriousness and with every demonstration of sincerity . . . that . . . it was the settled policy of this Government in every contingency, even in that of an open contest with Great Britain, to avoid entangling itself with European connexions which could only tend to involve this country in disputes wherein it might have no possible interest, and commit it in a

common cause with the allies, from whom, in the moment of danger, it could derive no succour."

Assured that there was no danger that America would join the Baltic powers, Grenville had no difficulty in defeating Jay's proposals. Jay, anxious to have some kind of treaty which would prevent war, retreated, and, as stated, signed the so-called Jay Treaty. On the day the treaty was signed he wrote to Ellsworth, Washington, Hamilton, King and Pinckney that the treaty was concluded and he thought we had reason to be satisfied; no further concession could be obtained; if this treaty failed he despaired of another. To Randolph, in sending the long-expected treaty, he wrote an explanation and defense of the finished work. Among the crumbs of comfort which he offered are the following: that Lord Grenville at his suggestion was willing to interpose with Algiers in our behalf, and that reserve and delicacy had been observed respecting our concerns with France; that no objection was raised to the stipulation in favor of existing treaties.

Such favourable opinions of the treaty, however, were not shared by our minister in France, or by the French themselves. Monroe was having a distressing time. He was as much a Frenchman in his sympathies as Jay was an Englishman in his. Believing that there was little prospect of a successful negotiation in England, and impressed by the success of French arms, he had become convinced that through French help our grievances against both England and Spain could be settled, as well as an agreement made with Algiers. He favoured making a loan to France and allowed the French to think that, although he could not promise it, it might.

be arranged. Meanwhile the French committee were asking him embarrassing questions about Jay and his treaty. He replied that he did not know whether Jay had returned or not; that Jay was on special business only—namely, to demand reparation for injuries,—to this his authority was strictly limited.

Monroe wrote Randolph on January 13, 1795, that French cordiality to the United States was “clouded” by continued reports about Jay’s mission. It was said that Jay had not only adjusted points in controversy, but had concluded a treaty of commerce with Great Britain. Some reports were even to the effect that he had concluded a treaty of alliance offensive and defensive. Monroe reiterated what he had said about Jay’s restricted powers, but the Committee requested information. He complained earnestly to Randolph about his inability to secure information from Jay.

Randolph wrote to Monroe on February 15, 1795, that he had read that Mr. Adet was coming to America in place of Fauchet, who had been hitherto acceptable. He regarded it as unfortunate that changes of party should mean a change of minister. “However,” he said, “the only thing which essentially concerns us, is that the representative of the French Republic in the United States should lay aside all intrigue, and imitate ourselves in a course of plain and fair dealing.” He said that the Jay Treaty had not arrived; but that Jay under his instructions, could not have made a treaty contradicting arrangements with France. On March 8, Randolph approved Monroe’s activities; he was particularly glad to get his account of the Jacobin societies. This account was so appropriate now that extracts from it had been

published as from a letter "*of a gentleman in Paris to his friend in this city.*"

The treaty negotiated by Jay, the Secretary added incidentally, had arrived the night before; a cursory view showed him nothing that France could object to. A month later Randolph wrote Monroe again, this time defending the treaty against the charge of unfairness to France. But these assurances and the treaty itself did not relieve Monroe's anxiety or ease his difficulties. For he wrote to Jefferson "my situation since the report of Mr. Jay's treaty has been painful beyond anything ever experienc'd before."

When the treaty reached Washington on March 7, it was decided that it should be a matter of confidence between Washington and Randolph alone. Despite Randolph's earnest defense of it to Monroe, neither he nor Washington approved of it.

Again, welcoming Jay back home, Randolph wrote on May 30:

"My own *private judgment* is, I confess, *made up* as to the *propriety of ratifying it.*"

He then submitted to Jay a list of seven queries with reference to the negotiations and the meaning of the treaty.

Jay made reply on June 1, 1795—but his answer did little to place the treaty in better light.

The Senate met on June 8, as reported by Randolph. The treaty was discussed behind closed doors and under a pledge of secrecy. There was earnest opposition to it, particularly to the twelfth article. Although the Federalists desired the acceptance of the whole thing just as it came from the hands of Jay, who defended this article,

they had to submit to Senate action rejecting it and even then with barely the necessary constitutional majority, recommending to the President the ratification of the rest of the proposed treaty.

In the meantime reports had gone forth as to the contents of the objectionable document. An extract from it which the French minister had purchased from a senator had been printed in the *Aurora*.³⁴ And just as Washington was about to publish a correct version of it, it came out in full, July 2, 1795, due to the revelations of Senator Stevens Thomson Mason of Virginia. It had already been shown by a Federalist senator, probably King, to the British minister and the substance of the proceedings about it had been revealed to the same minister by Oliver Wolcott, Secretary of the Treasury.

The storm beat upon the treaty and upon Jay. Jay was burned in effigy. Hamilton attempting to defend it was stoned. Prominent Republicans were loud in their denunciations.

The treaty was bad enough—though doubtless its deficiencies were exaggerated in the partisan discussions of the time. It did prevent war for a period. It granted us the East Indian trade. In the rejected twelfth article it pledged us not to export molasses, sugar, coffee, cocoa, or cotton. Jay knew that a little cotton was being raised in the United States, but of course had no conception of how significant cotton was to become in export trade.³⁵ The treaty secured for us the western posts, but delayed their delivery until June 1, 1796. It secured no compensation for Negroes carried off after the Revolution. It gave up the contention that free ships make free goods, ignored impressments, and left the subject of contra-

band in an ambiguous state. While it contained a stipulation in general terms that nothing in the treaty should "be construed, or operate, contrary to former and existing public treaties with other Sovereigns or States," in specific articles it was so injurious to France as to be a "submission for the period of the war to all British claims."³⁶ "No rational interpretation of such a treaty can leave a doubt in candid minds that the United States government, having plain grievances against King George, and plain opportunities for annoyance, yielded all the favours in her power to bestow, for the sake of getting these grievances redressed for the first time, and redressed only just far enough to obviate the necessity of immediate war."³⁷

A new phase was introduced when word came that another order-in-council had been issued authorizing again the seizure of our ships laden with provisions.³⁸ Bad in itself, doubly bad at a time when the British ministers were professing friendship, it was trebly bad as an interpretation of the meaning of the clauses in the treaty relative to contraband.

Randolph and Washington having determined that the treaty ought to be ratified, with the exception of the twelfth article, had to decide serious questions. In what manner could ratification be executed of a treaty that required amendment, and should this ratification take place while the provision order remained effective?

To these questions the Secretary of State addressed himself.

On June 25, he suggested that the President inquire the opinion of members of the Cabinet on the following points:

1. Whether it was the intention of the Senate that the new article carrying out their resolution of suspending the twelfth article should be submitted to the Senate.

2. Whether the Constitution permitted the President to ratify this article without submitting it.³⁹

The President, on June 29, submitted these questions in substantially the form suggested by Randolph. Randolph opposed sending to the Senate an amendment already drawn up, but nevertheless submitted to the President a draft of such an amendment in case he desired to discover their opinion before proceeding further.

Randolph again wrote the President on the 27th, a memorandum of facts to be recorded. He recited that Fauchet had requested the postponement of the Senate vote until his successor, Adet, should arrive and impart his instructions.

As a matter of fact, Randolph had done his best to allay the apprehensions of the French minister about the treaty, as he had done to allay those of Monroe and the French Committee of Public Safety.

Fauchet wrote to his Government on February 4, 1795, that Jay's mission had surprised him. He did not know what to do; his instructions failed to cover this point. Randolph's conversation had been his only resource. He had pointed out to our Secretary of State that the Jay mission weakened the political bonds between the people. But "*Il joua, à ce qu'il paraît le sincère et me fit de fausses confidences.*" Fauchet returned to his complaints from time to time until his retirement as minister, intensifying them also to the effect that the

United States had been delinquent in the enforcement of her neutrality. Adet, on his arrival, took up the theme, particularly in a letter of June 30. He contended that the Jay Treaty violated our treaty with France—in that it included, in the list of contraband, articles which were excluded in the treaty with France and also that it allowed the British to bring in prizes, and prohibited the arming of the ships of foreign states in American ports.

Randolph answered that no increase had been made in the list of contraband articles not assured in the law of nations. In consequence Great Britain was in this respect granted no more than she was entitled to already. He repeated the statement so often made that the rights of France were protected by the clause embedded in the middle of Article XXV of the Jay Treaty, that: "Nothing in the proposed treaty contained shall be construed or operate contrary to former and existing public treaties with other sovereign States."

As the time approached when some decision should be made by the President as to his course of action, Randolph wrote him a strong letter. He argued at length in favour of his contention that the new article—the suspending article—did not have to be submitted to the Senate. Randolph had already proposed to the President a message to the Senate, expressing the Administration's opinion of the matter, and had, as stated above, submitted to him the text of the proposed suspending article.⁴⁰ He set forth *seriatim* his reasons for and against ratifying the treaty. He held emphatically that ratification should under no circumstances take place while the order authorizing the capture of provisions remained in effect. He suggested that the Secretary of State inter-

view Mr. Hammond and say to him in effect that "the President cannot persuade himself, that he ought to ratify, during the existence of the order"; that order removed, he would ratify "without delay, or farther scruple."

As a further method of procedure, he proposed a memorial by the Secretary of State to the British minister and the transmission of information to the British Ministry of his intention to ratify. The reply of the British was to be handed to Mr. Deas, Secretary of Legation—Mr. Pinckney having gone to Spain. Ratification should be exchanged in America as the President should see the article after it had been assented to by his Britannic Majesty. The provision order should not be tolerated.

The President instructed Randolph to address the British minister, as had been suggested. In accordance with these instructions, the Secretary of State interviewed Hammond and told him what the President had said. Hammond asked him "if it would not be sufficient to remove the order out of the way; and after ratification to renew it." Randolph replied with warmth that "this would be a mere shift, as the principle was the important thing." "He then asked me," writes Randolph, "if the President was irrevocably determined not to ratify; if the provision order was not removed. I answered, that I was not instructed on that point. He said, that he would convey my observations to Lord Grenville by a vessel which was to sail the next day; and then left me. I immediately returned to the President's room, and acquainted him with the foregoing circumstances. He said, that I might have informed Mr. Hammond that he never would ratify, if the provision order

was not removed out of the way—He then directed me to prepare the memorial of which I had spoken to Mr. Hammond, the form of ratification and instructions for the person, who was to manage the business in London.”⁴¹

In a letter, dated July 22, Washington, intimating that he wanted Randolph to let the other members of the Cabinet know his “determination with respect to the ratification of the treaty,” goes on to define what his “determination” was. “The first, that is, the conditional ratification (if the late order, which we have heard of, respecting provision vessels, is not in operation) may, on all fit occasions, be spoken of as my determination, unless from anything you have heard or met with since I left you, it should be thought more advisable to communicate further with me on the subject. My opinion respecting the treaty is the same now that it was, namely, not favourable to it, but that it is better to ratify it in the manner the Senate have advised, and with the reservation already mentioned, than to suffer matters to remain as they are, unsettled.”

Meanwhile Randolph had written the draft of the memorial to the British minister. This is a long document, stating in substance that despite the provisions in the proposed treaty which the President could not approve, the President “had preferred to ratify the treaty, rather than keep alive those seeds of discord.” But “the disposition to ratify has been suspended at least by a recent order, issued under royal authority.” “To ratify then in the face of this comment,”—the interpretation of the treaty which the provision order justifies—“would stamp upon the article a meaning which the U.S. dis-

avow; and contribute to the establishment of a principle against which they revolt.”⁴²

Randolph kept Washington, now at Mount Vernon, informed about the progress of affairs. He told him on July 24 that advice which Hamilton had given him, “as to the withholding of a ratification until the order for seizing provisions was rescinded, does not appear to have been circulated among the particular friends of the gentleman from whom the advice came.” The following day he wrote Washington that he had communicated the President’s determination, with reference to ratification, to the other gentlemen.

He had no doubt that the order for the seizure of provisions existed. Four days later he wrote that it had been agreed that there was no necessity for Washington’s immediate return to the Capital. He reported that Hammond had received his recall. On the 31st, the President wrote a wise and guarded letter containing a paragraph approving Randolph’s memorial:

“The memorial seems well designed to answer the end proposed; and by the time it is revised and redressed, you will probably (either in the resolutions, which are or will be handed to me, or in the newspaper publications, which you promised to be attentive to,) have seen all the objections against the treaty, which have any real force in them, and which may be fit subjects for representation in the memorial, or in the instructions, or both.”

Meanwhile, Randolph, on July 14, had written Monroe that “the late British order for seizing provisions is a weighty obstacle to a ratification. I do not suppose that

such an attempt to starve France will be countenanced." And on July 21 to all the ministers abroad "if I were permitted to conjecture what that would be [the "conclusive step" in regard to the treaty], I should suspect that, at any rate, he [the President] would not sign it until it should return from England, with the addition of the suspending article, and probably not even then, if a late British order for the capture of provisions, going to France, should have been issued, as we suppose, and increase the objections which have been lavished upon it."

But another letter, written by a colleague of Randolph, to Washington, was to have significant results for the Secretary of State, if not for the treaty itself.

CHAPTER V

RANDOLPH'S RUIN

“ON the subject of the treaty,” wrote Pickering to Washington, July 31, “I confess I feel extreme solicitude, and, for a *special reason*, which can be communicated to you only in person. I entreat, therefore, that you will return with all convenient speed to the seat of government. In the meantime, for the reason above referred to, I pray you to decide on no important political measure, in whatever form it may be presented to you.”

Washington hastened back to Philadelphia, arriving on August 11. On the 19th, Randolph resigned. Since that date his name has been under a cloud. It has gone down in history as that of the one Secretary of State who had attempted to betray his country. Nothing usually is recalled about Edmund Randolph save that he resigned in disgrace. One who writes of his official career must give more than the ordinary account of the events leading to his retirement.

On October 31, 1794, the French minister, Fauchet, wrote to the Commissioner of Foreign Relations a famous dispatch, “Number 10.” It was a long account of political parties and conditions in America, written in an effusive and exaggerated tone. It purported to be based on revelations made to him by Randolph. It says: “D’ailleurs les précieuses confessions de Mr. Randolph jettent seules sur tout ce qui arrive une lumière satis-

faisante." In particular it gave an interpretation of the Whiskey Rebellion and represented Randolph as intimating that this rebellion had been hastened by the government in order to secure a force available to put down the revolution or civil war that was on the way. Under pretext of giving energy to the government, the real plan was to introduce absolute power. Hamilton represented the military party and was responsible for raising the army; Randolph represented the party of peace and the sending of commissioners was due to his influence over the mind of the President.

It proceeds then in an absurd paragraph to represent the Secretary of State as having great influence in the "popular society" of Philadelphia; "in consequence he merited attention." As far as can be made out from Fauchet's confused narrative, the men who were carrying out the vigorous plans of Hamilton needed co-operation among those whose patriotic reputation could influence the Republicans. He continues: "Il parâit donc que ces hommes, avec d'autres que j'ignore, tous ayant sans doute Randolph à leur tête balançait à se décider sur un parti. Deux ou trois jours avant que la proclamation fut publiée et par conséquent que le Cabinet eut arrêté ses mesures, Mr. Randolph vint me voir avec un air fort empressé, & me fit les ouvertures dont je t'ai rendu compte dans mon No. 6."⁴³

Then he comments: "Ainsi avec quelques milliers de Dollars la République aurait décidé ici sur la Guerre Civile ou Sur la paix! Ainsi les consciences des prétendus Patriotes en Amérique ont déjà un tarif! Il est bien vrai que la Certitude de ces conclusions pénibles à tirer, existera éternellement dans nos Archives! Quelle vieillesse

aura ce Gouvernement, s'il est d'aussi bonne heure décrépit. Telle est, Citoyen, la conséquence évidente du Système de finances conçu par M. Hamilton."⁴⁴

The French corvette, *Jean Bart*, carrying this dispatch, was captured by the British man-of-war *Cerberus*. A packet of papers was thrown overboard by a French officer. In the packet was discovered this letter No. 10. It was sent to Lord Grenville and by him sent to Mr. Hammond, the British minister. Lord Grenville and Mr. Hammond were both delighted to receive this precious document. The noble lord had already written, on November 20, 1794, the day after he signed the Jay Treaty, that "the whole conduct of that gentleman [Randolph] since his first appointment to the official situation he now holds has given the greatest dissatisfaction here."⁴⁵

Making other strictures on Randolph's conduct, Lord Grenville had added: "Without making any ministerial remonstrance, you should converse confidentially on this subject with those persons in America who are friends to a system of amicable intercourse between the two countries; in the view that some steps may be taken in respect to this affair, so as either to convince Mr. Randolph of the necessity of his adopting a different language and conduct, or at least to replace him in a situation where his personal sentiments may not endanger the peace of two countries between whom I trust a permanent union is now established."

Hammond, on July 27, acknowledged the receipt of the intercepted papers and promised to make such use of them as would "be productive of the most beneficial effects to the general interests of His Majesty's service."

He added: "The originals of the French letters are peculiarly interesting, and will, I am persuaded, if properly treated, tend to effect an essential change in the public sentiment of this country with regard to the character and principles of certain individuals, and to the real motives of their political conduct."

Mr. Hammond revealed the letter to Hamilton's successor, Oliver Wolcott, on July 26 at a dinner to which he had invited the new Secretary of the Treasury. Two days later this gentleman, exhibited the original letter which Hammond had given on promise of the receipt of an attested copy, to Timothy Pickering, the Secretary of War, and the day following they both visited the Attorney-General. It was agreed that the President should be urged to return at once. On July 30, Wolcott wrote to Hamilton: "Feel no concern, however, for I see a clue which will conduct us through every labyrinth except that of war."⁴⁶ On the evening of Washington's arrival, August 11, the French originals of the letter and an English translation were given him.

It is impossible in this brief survey to give a full account of all that happened between August 11 and August 19, the date on which Randolph resigned. The story is told, I think accurately, by Randolph in his *Vindication*. First of all the signing of the treaty was disposed of—while Randolph was ignorant of what was in the mind of Washington and of his colleagues about himself. Despite Randolph's protest, Washington now determined to ratify the treaty, even though the provision order had not been repealed.⁴⁷ The Secretary of State had the painful duty of taking to Mr. Hammond a memorial very different from the one he had written

and from the opinion he had previously expressed to the British minister. "Indeed," says Hammond, "when he delivered it to me Mr. Randolph did not attempt to conceal his chagrin upon the occasion, but voluntarily confessed that his opinion had been overruled in the President's Cabinet." Washington continued to treat Randolph with great consideration personally, dining at his home, dangling his children upon the President's knee, entertaining him at the President's home, placing him at the foot of the table. In the meantime, Hammond had sailed for home. Fauchet had left Philadelphia for the same purpose. On August 19, Washington confronted Randolph with the intercepted letter, in the presence of the other members of the Cabinet. Randolph made such explanations as he could, saying finally that "he would not continue in the office one second after such treatment."

Having left the President's house, he wrote a long letter of resignation. In this letter he told that he had gone immediately to his office, locked the door, and given the key to the messenger. On his return home, he reflected on the events of the morning. Two facts impressed him. One was that his usual hour of calling on the President had been postponed for the purpose of consulting "*others* upon a letter of a foreign minister, highly interesting to my honor, before the smallest intimation to me," while the others were "perfectly acquainted with its contents, and were requested to ask questions for their satisfaction." A second fact was that he had been asked "to retire into another room, until you should converse with them, upon what I had said." He told the President he meant to pursue the inquiry and was willing to meet any investigation. He asked for

a copy of the document. Until inquiry could be made he requested secrecy. He denied most emphatically that he had either received any money from Fauchet or that he had made any overtures to him for that purpose.

Whether guilty or not guilty, Randolph had no alternative to resignation. And although Washington in a letter written but not sent, said that Randolph's resignation was "voluntarily and unexpectedly offered," there was nothing for him to do but to accept it, promptly, as he did on August 20.

From the time of his resignation Randolph's conduct was that of a desperate man, determined on one point only, his vindication. He chased down Fauchet at Newport on his way home to France, and obtained from him a "certificate" emphatically asserting "that Mr. Randolph never received, either directly or indirectly, by himself or by another for his use, one shilling from myself, by my order, or according to my knowledge, hearsay or belief, from any other public officer of France. I declare that he never made to me in this respect a single overture; and that no part of the above circumstance has the least relation to him personally."⁴⁸ And although the explanation which he gives of the occurrence referred to in his intercepted dispatches, is difficult to comprehend, his explicit and emphatic assertions of Randolph's innocence, accompanied by Randolph's own emphatic denials, should in the absence of any other evidence to the contrary be accepted, especially as the original account on which the charges are based is itself so confused and incomprehensible. Having gone carefully over the evidence again, I am of the decided opinion, that Randolph is not only not proved guilty but that Henry

Cabot Lodge—no great admirer of Randolph—was right when he said “that the Secretary of State was corrupt, no one who knew him, as Jefferson said, for one moment believed. Whether he disposed of this charge or not, it was plain to his friends, as it is to posterity, that Randolph was a perfectly honourable man.” The fact that Randolph was “impecunious,” has probably had influence on the minds of some, leading them to doubt his honesty, despite the existence of not a particle of evidence to justify such a suspicion save the rambling and ambiguous statement of an impassionate French minister,⁴⁹ who later made a definite and emphatic assertion of Randolph’s innocence.

Nor can one assert with confidence that “Randolph, besides being found out at the moment, had, after the fashion of weak natures, gone further and shown more feebleness than anyone else had.” But it is certainly true that “others among our public men had put themselves into relations with foreign representatives which it is now intolerable to contemplate.” Hamilton had done it, Wolcott had done it, and Genet warmly accused Jefferson of saying one thing to him in private, and writing another thing in public correspondence. Both British and French ministers and their governments counted on intrigues with public men.

Most of what Randolph told Fauchet was easily accessible; and some things which the French minister thought were “precious confessions,” were authorized communications; difficulties were experienced from the fact that Fauchet used only the French language, while Randolph used both French and English.

According to our present standards it would be im-

possible for a public minister to discuss differences in the Cabinet and his influence over the mind of the President. Both of these things were well-known facts, which were the revelation of no secret to Fauchet. Randolph may have been voluble, imprudent, indecisive and unstable, but he was not dishonest, and there is no evidence that he betrayed his government or was more free in his discussions with foreign ministers than was unfortunately the custom of the day.

Having published his elaborate *Vindication*, Randolph returned to Richmond. There he undertook again the practice of law and soon was one of the leading attorneys at a brilliant bar. He was senior counsel in defense of Aaron Burr. He was chosen to deliver the funeral address over the distinguished Edmund Pendleton, President of the Virginia Court of Appeals.

However, his unfortunate experience as Secretary of State was to pursue him, consuming his estates and harassing his friends for several generations. A curious system of the time made the Secretary of State the disburser of funds for foreign relations and made him responsible personally for any losses that might be sustained. There were some losses during Randolph's incumbency. A deficit was found amounting to \$49,154.89. Randolph denied he owed the government. It is known that when he left Philadelphia he had to borrow £2000, Virginia currency, from his brother-in-law, Wilson Cary Nicholas.

A suit was brought against Randolph in the United States District Court at Richmond in June, 1797. The records of the case are found in the files of that court, accompanied by many interesting documents and letters,

some of them from Randolph. A search has also been made in the archives of the Treasury Department at Washington. Mr. Conway had in his possession personal papers, which have not been located, but which are quoted in his *Omitted Chapters of History*. In a letter to Albert Gallatin, Secretary of the Treasury, Randolph finally said: "Delay is so far from being an object or a wish with me, that I am resolved, by some means or other to close this business, and free myself from my painful predicament. For this purpose I submit to you the following propositions: For the security of the United States I will immediately pledge property of abundant value; and I will either submit to the award of two intelligent and impartial arbitrators, *chosen by yourself*, or their umpire; or I will go to Washington and abide by the decision of the auditor. [by an arbitrator]." Despite Randolph's complaints against his treatment at the hand of that officer, the Comptroller of the Treasury, Gabriel Duval, was selected as arbiter. On May 30, 1803, an order of the court was entered submitting, with the consent of the attorney of the United States and the defendant in person, all accounts and claims of the United States against Edmund Randolph to Gabriel Duval, and it was agreed that judgment should be entered for the amount found by him to be due. Randolph's claims for specific credits amounting to nearly \$53,000.00, some of the items of which were witnessed by his letters as Secretary of State stating that the sums were sent, were disallowed because vouchers regarded as proper could not be produced. Duval's award was that Randolph owed the Government \$53,162.89. This award was made "firm and stable" by a decree of the District

Court at Richmond on December 13, 1804. To the principal was to be added interest at six per cent from November 24, 1804, until payment was made.

Randolph, therefore, handed over everything to Nicholas, who discharged the entire account. However, in a curious fashion, the Treasury Department continued to carry Randolph's name on their books. In 1825, the heirs of Nicholas paid another \$6,075.12 and received a full discharge signed by Richard Rush, Secretary of the Treasury. Again they found there was still due \$2,880.01, but later, in 1834, that a balance was due the heirs of Nicholas of \$3,784.11. A few months later—long after Randolph and Nicholas were dead and the account had been twice settled—the Comptroller reported that Randolph owed \$61,355.07. In 1856, Solicitor Streeter brought the absurd condition to the attention of the Secretary of the Treasury, who ordered a revision of the account in accordance with the actual facts. This was not done and in 1887, the Register of the Treasury showed a balance against Randolph of \$61,355.07!

This amazing history was closed only in 1889, when, on motion of Senator Daniel of Virginia, the Senate ordered a Treasury Report on Randolph's accounts. This report showed the facts as stated above to be correct.⁵⁰

After his retirement, Randolph continued his interest in public affairs, though there is no record of his participation in them. On the disputed question of the right of the House of Representatives to decline to pass measures carrying the provisions of the Jay Treaty into effect, he took the position that the House had the right to refuse to do so. For this he won the commendation of Jefferson.⁵¹ He worked out the logical theory of the

meaning of the word "state" in the Constitution and in the Virginia Resolutions of 1798 and wrote Madison at length on the subject.⁵² His views are thought to be reflected in the report of 1799 made by Madison. In the Burr trial as senior counsel he refers regretfully to Jefferson's declaration, prior to judicial determination, that Burr was guilty. In 1809, he regarded "the individual responsibility" of Madison, then President, as "a bulwark to my hopes" in the threatened crisis.⁵³ He was spending his leisure time in writing "A History of Virginia," of which most was later destroyed by fire. The larger part of his labour, however, went into his causes, mostly argued before the Court of Appeals.

Following the death of his devoted wife in 1810, he also fell a victim to the family disease of paralysis. From then on his work was narrowed, and he spent his time mostly with his children and relatives. When his son, Peyton, likewise became a victim of the malady, Randolph steadily declined in strength until the end came, at Millwood, Clarke County, Virginia, September 12, 1813. All bitterness had long vanished from his heart; Washington, the hero of his youth, despite the harsh words which Randolph not unnaturally spoke after the distressing events attending his resignation in 1795, became the hero again of his latest years.

TIMOTHY PICKERING

SECRETARY OF STATE

DECEMBER 10, 1795 TO MAY 12, 1800.

(*ad interim*, AUGUST 19, TO DECEMBER 10, 1795).

BY

HENRY J. FORD, PH.D.

PROFESSOR OF POLITICS, EMERITUS,

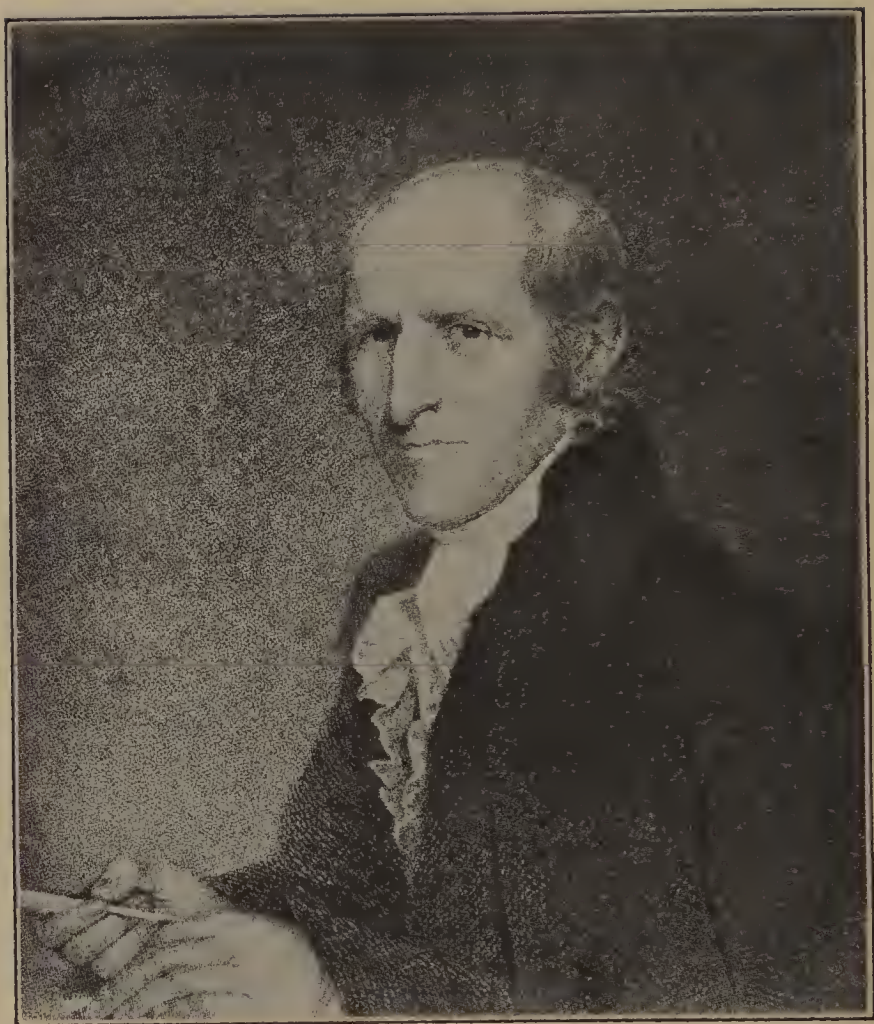
PRINCETON UNIVERSITY

TIMOTHY PICKERING

ENGRAVED BY T. C. WELCH FROM A DRAWING

BY J. C. LONGACRE, AFTER A PORTRAIT

BY GILBERT STUART



Timothy Pickens

TIMOTHY PICKERING

CHAPTER I

APPOINTMENT TO OFFICE

WHEN a rumour got afloat that Timothy Pickering was going to be appointed Secretary of State by President Washington, his friends were surprised to hear it, as they all thought that he was much better in place where he then was—the War Department. Pickering himself thought so too. Writing to Stephen Higginson, September 22, 1795, he said: “But you will believe the President not so unwise as to have tendered, and me so imprudent as to have accepted, an office to which I am so little competent.”

There was nothing in his record to suggest his fitness for the State Department, nor, indeed, in his character or disposition. Nevertheless he was appointed and he held the office for nearly five years.

The explanation of these curious circumstances is the difficulty which Washington had in getting suitable persons to fill his few Cabinet offices, after the break-up of his original Cabinet. Early in Washington's first Administration, Pickering was appointed Postmaster-General. The post office did not then rank as a Cabinet department, and Pickering did not enter the Cabinet until January 2, 1795, when he was appointed Secretary of War to succeed General Knox, who had resigned be-

cause he was growing old and had had enough of public life. The business of the department at that time included both naval affairs and Indian affairs, and there was much to attend to in both those fields. Pickering applied himself to the duties of his office with so much ability, energy and diligence that he became Washington's stand-by in every important emergency. And that is how he got to be Secretary of State, an office that he never wanted and was loath to accept.

After Jefferson resigned, December 31, 1793, the office of Secretary of State was taken over by Randolph, who had been formerly the Attorney-General. Randolph resigned on August 20, 1795, and the office then went a-begging. It was offered to William Patterson of New Jersey, Thomas Johnson of Maryland, Charles C. Pinckney of South Carolina, and Patrick Henry of Virginia. All refused it. Meanwhile somebody had to be in charge, and at Washington's request Pickering undertook to attend to the business of the State Department in addition to his other duties. In this way Pickering acquired the peculiar distinction of having presided over more departments of the government at one time than any other Cabinet officer in our history. For a considerable period in 1795 he had charge of the army, the navy, and Indian affairs, as well as the State Department. This manifold headship was not merely nominal. He was active and provident in the affairs of each of these offices. Of these various employments he liked least the work of the State Department, but it was there that he stayed longest.

Finally Washington concluded that it would be easier for him to get a competent Secretary of War than to find any better Secretary of State than Pickering was

proving himself to be. And so he proposed to Pickering to transfer him from the War Department to the State Department in permanence. In a letter to Alexander Hamilton, November 17, 1795, Pickering gave this account of what then occurred. He said:

“I declined it as not possessing the talent so much to be desired in a Secretary of State, in the propriety and ability of whose conduct the dignity, as well as the interests of the nation, were so materially involved. On various grounds the President urged my acceptance, and after the many fruitless endeavors he had used to fill the office, I felt reluctant to give him a denial. I promised to consider it.

“The same day Mr. Wolcott called upon me. I found he had been consulted. I related what had passed, and he pressed me to accept the office, but I remained undecided. We repeatedly conversed about it afterwards. I still wished the office in abler hands. Last Friday evening, going to see Mrs. Washington, I found the President and Mr. Wolcott in the antechamber, the President’s countenance manifestly uneasy. As soon as opportunity offered, I spoke to Mr. Wolcott. The President was anxious for my determination, and again Mr. Wolcott urged me to take the office. I reflected a few minutes; the company retired; and then I made the President the following declaration:

““That I wished to keep him no longer in suspense, and that I would accept the office of Secretary of State; but, as I had no ambitious views, and fresh embarrassments might arise in his attempts to fill the

Department of War, I would propose, with submission to his opinion, that things should remain for the present as they were. I would continue my attention to both departments; if that of the War could be filled to his satisfaction, I would go to the Department of State; if a character well adapted to the latter should present, I would remain where I was. In a word, to free him from all embarrassment, I would serve in one office or the other, as the public good should require. The President answered, 'That is very liberal'; and desired me to call the next morning to consider of a successor in the Department of War.'"

The Mr. Wolcott referred to in this letter was Oliver Wolcott of Connecticut, who had been a subordinate of Hamilton in the Treasury Department and had succeeded him as Secretary of the Treasury. In the work of that office he received Hamilton's friendly assistance whenever it was desired. Pickering was on terms of intimate friendship both with Hamilton and Wolcott, and Wolcott's persuasion was doubtless influential in overcoming his unfeigned reluctance to accept an office for which neither in his own opinion nor in that of his best friends was he suited either by temperament or by previous training. There is plenty of evidence that Pickering was by nature the plain, blunt man, always inclined to speak his mind without regard to consequences, and—as is commonly the case with that type of man—he seems to have rather prided himself on that characteristic. Writing in 1824, Pickering remarked:

"All my life long, I have been so accustomed freely to express my opinions, that some of my friends have

occasionally regretted that I was so little reserved, that I did not conceal my sentiments, when, though correct, they might give offence; in a word, that I did not wear a mask."

Pickering became Secretary of State by temporary assignment, August 20, 1795. He was nominated to the office in permanence on December 9, 1795. He was confirmed by the Senate and commissioned the next day. He continued to act also as Secretary of War until February 6, 1796, when James McHenry of Maryland entered upon the duties of that office.¹

At the time Pickering became Secretary of State, he had just turned fifty. He was born July 17, 1745, at Salem, Massachusetts. Writing in 1797 to an English clergyman of the same family name who was making genealogical inquiries, Pickering said he was descended from John Pickering, born in England about 1615, who emigrated to New England and settled in Salem, where he died about 1655. So then, the Pickering family had been established in Salem for upwards of a century before Timothy Pickering was born there. It was a Puritan stock and the characteristics of the type were strongly marked in him.

After he was graduated at Harvard, 1763, Pickering acquired enough law to be admitted to the bar in 1766, but he had neither liking nor aptitude for the legal profession,—facts which he candidly admitted. According to the biography written by his son, the rather diverse fields of music and militia service were his principal interests. At one time he taught classes in singing sacred music. He was commissioned a lieutenant of militia in

1766, and this started him on the career by which he arrived at national distinction. Elected colonel in 1775, he marched at the head of the Essex regiment, in December 1776, to join the Continental army. He was appointed adjutant-general, June 18, 1777; and quartermaster-general, August 5, 1780, in which capacity Pickering provided supplies for the march to Virginia which trapped Cornwallis and brought about the surrender at Yorktown.

The office of quartermaster-general was abolished in 1785, Congress holding that there was no need for it any more. Pickering was thus left without employment. He had married in 1776, before going off to the war, and now had a growing family to provide for. He went into business in Philadelphia as a commission merchant, but his gains were insufficient for his needs. In 1787 he settled in the Wyoming valley, where he had a large tract of land the resources of which he expected to develop, but he found the place the scene of an insurrection that marred his plans. The region had been claimed both by Connecticut and Pennsylvania, on the basis of the territorial grants made to them by their colonial charters, but the controversy had been judicially decided in favour of Pennsylvania. There were many settlers in the region who held their lands by Connecticut titles and a movement spread among them to rise in arms to defend their possessions. Pickering was seized in his home by a band of insurgents who carried him off to be held as a hostage. Their idea was that to obtain his own release Pickering could be made to intercede with the Pennsylvania authorities for the release of an insurgent leader who had been arrested. Pickering flatly refused to do their bid-

ding and lectured them severely on their behaviour. After he had been held for nineteen days he was released without agreeing to do anything for his captors save to draft and transmit their petition for pardon.

Pickering was appointed to a number of county offices, and in 1789 he was a member of the convention which framed the constitution of Pennsylvania, but he was in very embarrassed circumstances. His offices yielded scanty fees, rarely paid in money, and his lands were unsaleable and unproductive. He and his friends thought that there should be some place for him in the new federal system that was now being organized. He was successively a candidate for appointment as Treasurer of the United States, Postmaster-General, and Comptroller of the Treasury, but he was passed over each time. He was, however, appointed a commissioner to negotiate a treaty with the Six Nations, and he managed that business to the satisfaction of Washington who now offered him the office of Postmaster-General, which had just become vacant. Pickering accepted it at once, and his official commission was issued August 12, 1791.

At the time of his appointment the pay was only \$1500 a year, but in 1792 it was raised to \$2000, a sum then reckoned as a sufficient support for a man with a family. But Pickering had an unusually large family to provide for. He had eight children, all boys, at the time he was appointed Postmaster-General, and twin girls were born to him while he held that office. Pickering himself was one of a family of nine, which included twin girls. Eventually Pickering's salary was raised to \$2400, which probably netted him more than the salary of \$3000, which he received when he became Secretary

of War and had to live in a style befitting Cabinet rank. He had been paying \$320 a year house rent, but he now took the house General Knox had occupied, at a rent of \$800. As Secretary of State, Pickering's salary was \$3,500, until 1799 when it was raised to \$5,000 a year.

To such a downright and outspoken nature as Pickering's, the restraint imposed by Cabinet responsibilities was sure to be distasteful, and the aversion for political office which crops out occasionally in his personal correspondence was undoubtedly sincere. In the course of his long life he made several attempts to establish himself in private business, but events kept throwing him back into public life. He seems to have been rather choleric in temper, and his honesty was as vigilant and exacting with himself as with others. In some negotiations with the Indians before his appointment as Postmaster-General he was engaged by the business for 111 days, but he charged only for the days on which he was actually at work, and the bill which he rendered for his total compensation and all expenses was only \$467.37. During his career as Secretary of State, an item was published to the effect that a merchant who had applied for a passport was told that there was no fixed charge, but that the amount was left to the generosity of the recipient, who in this case handed out five dollars. Pickering at once made an investigation, and although those inculpated pleaded that they had violated no law in taking such gifts, he discharged the chief clerk of the Department, and one of the other clerks.

Pickering's physique corresponded to his mental characteristics. He was tall and gaunt, with powerful muscles. Even when quite an old man he once remarked, "I am

ready for a wrestling match with any man in Salem.” He had a long, bony face, the forehead high but rather narrow, a nose of the eagle type and a long, firm chin. He was a loud and fluent talker, and it may be gathered even from accounts given of him by friends and admirers that he had a stern and overbearing manner. He practised a simplicity of dress that was particularly marked in that period of ornate styles for men. In a letter written in 1797, when as Secretary of State he had frequently to appear in polite society, he remarked: “While all sorts of people are greased with pomatum and whitened with powder, my bald head and lank locks remain *in statu quo*.”

Such was the man who was called upon to preside over the State Department during a most difficult period in our foreign relations, when extremely delicate and dangerous problems kept presenting themselves. To cope with them he had a staff which in his time never exceeded six clerks and one messenger. In 1799 the entire pay-roll of the Department, including the Secretary's own salary, was only \$9,800, and the allowance for contingent expenses was \$8,500. He was without the aid of codes or digests, and had only such documentary guidance as was supplied by Vattel and a few other writers on international law, who laid down general principles which could be usually availed of on both sides of a controversy.

CHAPTER II

AN ACTIVE PARTISAN

TO get a complete view of Pickering's connection with the State Department, account of it must begin with his entrance into the Cabinet as Secretary of War, for soon thereafter he began to take an active interest in the affairs of the State Department, an interest which never relaxed.

Jay's Treaty with England had raised an issue over which there was intense excitement throughout the country, and the course which the Administration would take was for a considerable period undecided. In the events which now ensued Pickering became an important figure.

The treaty reached the Secretary of State, Randolph, March 7, 1795, and Washington immediately called an extra session of the Senate to consider it. The Senate met on June 8 and the President submitted the treaty without any expression of his own views, which, indeed, were not then formed. His brief message requested that the Senate would "in their wisdom decide whether they will advise and consent that the said treaty be made between the United States and His Britannic Majesty." On June 24, the Senate advised the President to ratify the treaty, on condition that the operation of the twelfth article be suspended as regards trade with the West Indies; and furthermore, the President was advised "to proceed without delay, to further friendly negotiations with His Majesty on the subject of the said trade."

The terms of the Senate's advice made it a question whether the President should sign the treaty, as amended, at once, or await the result of further negotiations. While the President was considering the point, an energetic agitation was carried on to influence his action. The Boston town-meeting condemned the treaty and similar action was taken in New York, Philadelphia, Baltimore, Richmond, Charleston, Savannah and other places.

While this agitation was at its height, Washington remained at Mt. Vernon. Pickering, then Secretary of War, wrote to him frequently, putting before him information tending to counteract the effect of the agitation. He transmitted a letter in which Stephen Higginson of Boston said of the town-meeting there:

“Men of reputation would not attend the meeting, being opposed to the town's taking up the subject. They were left wholly to themselves; no attempt was made to counteract them, though nine merchants out of ten reprobated the proceedings, and a large majority of the whole body of citizens were averse to it.”

Pickering himself attended the Philadelphia mass-meeting to note its actual character. He wrote to the President that the attendance was not over a thousand, of whom probably not two hundred would be deemed fit to serve on a jury.

“Yet these few men, with a mixed company still less qualified or totally unqualified, are impudently brought forward by their leaders to express the sense

of the great city of Philadelphia; to declare the meaning and effect of a long and intricate treaty,—intricate from the objects it embraces, utterly beyond the knowledge of the mass of the small meeting of citizens who pronounced upon its ends, and this without the least explanation or discussion.”

Although himself a New Englander, habituated to the town-meeting system of government, Pickering held that a town-meeting was not the place in which to expect to find an expression of the reason and good sense of the community. Writing to a Boston relative, Pickering expressed views on this subject which still retain their point. He said:

“Resolutions passed at such meetings, so far as they express opinions, lose in weight in proportion as they increase in votes; for, when once an assembly is so numerous as to be incapable of calm deliberation, its proceedings must be the offspring of passion and party. Besides, take the people of any one place, the more general their meeting, the greater will be the proportion of numbers incompetent to judge of the subject discussed . . . Boston, I have for years thought, would manage its affairs better by representation. If from Boston we pass to the larger towns of New York and Philadelphia, I will say, without hesitation, that a reasonable popular decision is impossible. The decision may chance to be right because the leaders may happen to be so. But the decision of a mob can, in no proper sense, be considered a result of reason.”

Opinions of this character were set forth by Pickering at considerable length in drafts he made for replies to communications reaching the President in opposition to the treaty. In answer to the selectmen of Boston, Pickering proposed that Washington should tell them:

“that the formation of laws and treaties demands much deliberate consideration, of which it is no reproach to my fellow citizens to say, that a numerous and promiscuous assembly of the people is incapable.”

Washington did not deem it prudent to use Pickering's drafts, not however because he did not share Pickering's views. In one of his letters to Pickering Washington remarked, with a severity rarely found in his correspondence, that “nothing short of profound ignorance or consummate wickedness could have dictated many of the resolutions which have been received by me.”

To all communications Washington made non-committal replies, and until he was ready to act, even the members of his Cabinet did not know what he would do. Randolph, the Secretary of State, had advised against signing the treaty. So late as July 21, 1795, he wrote to Monroe—then minister to France—that the outcome would probably be the return of the treaty for amendment, and he intimated that that would be the last of it. As a matter of fact, Washington had then fully made up his mind to sign the treaty, and an event was impending which not only destroyed Randolph's influence, but forced him out of the Cabinet. It was foreshadowed in a letter, July 31, 1795, to the President, in which Pickering said:

“On the subject of the treaty I confess that I feel extreme solicitude; and for a *special reason*, which can be communicated to you only in person. I entreat, therefore, that you will return, with all convenient speed, to the seat of government. In the meantime, for the reason referred to, I pray you to decide on no important political measure, in whatever form it may be presented to you.”

Washington arrived in Philadelphia, August 11, and at once sent for Pickering, who in later years wrote this vivid account of his part in Randolph's ruin:

“I hastened to the President's house, where I found him at the table; and Randolph—cheerful, and apparently in good spirits—also at the table. Very soon, after taking a glass of wine, the President rose, giving me a wink. I rose and followed him into another room. ‘What’ (said he), ‘is the cause of your writing me such a letter?’ ‘That man,’ said I, ‘in the other room’ (pointing towards that in which we had left Randolph) ‘is a traitor.’ I then, in two or three minutes gave the President an intimation of what Fauchet in his intercepted letter said of Randolph. ‘Let us return to the other room,’ said the President, ‘to prevent any suspicion of our withdrawing.’ I had deliberately and carefully made a written translation of Fauchet's letter, ready for the President's examination.”

No action was taken by the President in this matter, until he had signed the treaty. Then Washington handed Fauchet's letter to Randolph with a request for an explanation. The immediate result was Randolph's resig-

nation and an immediate result of that was the putting of Pickering in charge of the State Department.

Pickering's strong tendency to assume active direction is strikingly shown by the fact that just as soon as he was certain that Washington would sign the treaty, and before he knew what would be the outcome in Randolph's case, he conceived a new project, which he at once began to push. His idea was that Washington should make an address to the country,—“a solemn, public declaration by the President, of the principles of his administration,” in it “appealing to the train of actions which marked his whole life, for the purity and patriotism of his conduct on the present occasion.” Pickering laid this project before Hamilton, Senator King of New York, and Jay. Of their replies the one from Jay has been preserved. While it did not definitely oppose the project it brought forward some weighty objections. One of these was that it did not befit the dignity of the President's office for him to come forward in his individual capacity. “It appears to me,” remarked Jay, “to be a good *general* rule that the President should very rarely come forward, except *officially*.”

This is but one among many indications supplied by the views and practices of the times that the Presidency was conceived to be a species of kingship, elevated above the region of party strife. The notion of a party administration and of its proper consequent, cabinet solidarity, had not yet been developed. It is important to keep this in mind, to understand how it was that members of the same cabinet could each feel quite free to pursue his own policy, and make use of whatever means were available to promote it.

By the time replies reached Pickering from those whom he consulted, he was the Acting-Secretary of State, a position of some advantage in carrying out his project, but nothing came of it at the time. However, the Farewell Address which Washington made to the country towards the close of his Administration, is an appeal of much the same character as Pickering had suggested though it is something conceived by Washington as early as 1792.

Such was Pickering's appetite for work that his activities were never restricted to the affairs of his own department. Long after the War Department had passed into the care of Secretary McHenry, a draft prepared by McHenry for the President's use in an address to the Cherokee nation, transmitted to Pickering merely for his information, was promptly amended and corrected by him. After sending the revised version to the President with an urgent letter, Pickering set about making an entirely new draft, which he finished and sent to the President the same day. The upshot of the business was that Washington dropped the whole project, and neither draft was used. There was no element of antagonism to McHenry in Pickering's action. The two were then, and continued to be, the best of friends, but it was not in Pickering's nature to see anything amiss without trying to correct it, if it was anywhere within his reach.

The alacrity and decision with which Pickering plunged into the affairs of the State Department plainly indicate that he had already formed strong convictions as to public policy, upon which he was always ready to act. His guiding principle at all times was the commercial

interest of New England. His mental outlook was always that of a citizen of Salem, facing the ocean. He himself put with the utmost conciseness the case that he always had before him in judging of events, when he wrote "the sea is our farm!" But to understand why this principle gave the direction to his diplomacy which it did, it is necessary to consider the state of the times.

To many of those who engaged in the Revolutionary War, it had accomplished more than had been desired of it. What the leaders of the American revolt originally wanted was autonomy and not independence. Although the course of events committed them to independence, the loss which that entailed of all the commercial rights and privileges the colonists had enjoyed as British subjects was a sore matter. There were indications that to regain those rights and privileges, some regions would be willing to separate themselves from the United States. The separatist movement in Vermont was so pronounced that it sent an agent to London to negotiate a free-trade treaty. Separatist tendencies were also at work in the settlements west of the Alleghanies, and they gathered force from the belief that the seaboard states cared little what became of them. Washington made a note in his diary for May 1, 1790, of communications made to him of a disposition among members of Congress "to pay little attention to the Western country, because they were of opinion it would shake off its dependence on this, and in the meantime be burdensome to it." The general prospect at this time was such as to suggest that each section might have to take independent action for the protection of its interests, and Pickering kept in view this possibility.

Serious differences existed between Great Britain and the United States as regarded the fulfilment of the engagements of Jay's Treaty and there was much irritation over them.² These were matters with which Pickering was fully conversant, but however annoying they might be, the fact still remained that trade with Great Britain amounted to more than seventy-five per cent of the foreign commerce of the United States. Considerations of this nature were counteracted among the mass of the people by the antipathies engendered by the Revolutionary War, but in the long run interest is apt to prevail over sentiment, and although commercial influence was momentarily overborne by the unpopularity of Jay's Treaty, it recovered its sway before long, and established its position as the pivot of New England politics.

At the time Pickering entered the Cabinet, another new and powerful influence was at work,—attachment to the principles of the French Revolution. Sympathies were aroused that put humanitarian considerations above calculations of commercial interest and obtained for them able political leadership. Such feelings Pickering never shared. The political philosophy which France was spreading was abhorrent to his Puritan instincts, and antagonism to it became with him a principle of conduct that was in entire accord with his attachment to New England commercial interest. Trade with France was of small value compared to that with Great Britain.

Considerations of the above nature settled Pickering's course for good and all, and gave him a view-point from which he never deviated. His character was such as to impart something like religious fervour to his opinions, which accounts for the extreme lengths to which he

would go in supporting them. Add to these forceful traits, that he was entirely free from anything like nervousness or timidity, that he was loud, masterful and untiring, and we have a fairly complete picture of the man who became head of the State Department in the second year of Washington's second Administration.

CHAPTER III

GRASPING THE HELM

PICKERING'S task in mastering his new duties was lightened by the fact that the attitude of the United States towards countries at war had been definitely settled and distinctly stated. Notwithstanding the sharp dissensions in Washington's original Cabinet, a unanimous agreement had been reached as to the behaviour which neutrality required of the United States, and this was set forth in a series of rules adopted in August, 1793. They are summarized in notes to the preceding sketch of Secretary Thomas Jefferson. These rules, which commentators on international law describe as a development of epochal importance, Pickering always had by him, and their impress is distinctly visible in his dispatches.

The abrupt departure of Randolph left to Pickering the continuance of some negotiations already begun over matters in dispute between the French minister and our Government. Adet, who at that time represented France, was regarded as a man of more amiable manners than his predecessors, but his communications still retained the truculent tone which they had adopted. A case which gave Pickering much trouble was that of the French corvette, *Le Cassius*. The final disposition of this case is cited in the law digests as an important judicial affirmation of the principle that neither the public vessel of another nation nor its officers are liable to answer in our courts for a capture made on the high seas.³

Along with this case of *Le Cassius*, Pickering had to

consider another affair even still more exasperating to the French minister and quite as much, if not more so, to the Secretary. The French frigate *Medusa* had been for some time in the harbour of Newport, and a British ship-of-the-line, the *Africa*, Captain Rodman Home, lay outside watching for her like a cat at a rat hole. Several American vessels were stopped by the *Africa* and seamen taken from them, and Captain Home demanded that he should have the aid of the Rhode Island authorities in reclaiming all British seamen at liberty on shore. A right of this character was in fact enjoyed by France, by special treaty provision, but was not possessed by England. Distinctions of this character did not appeal to Captain Home. He drew up a peremptory letter, addressed to the British consul, to be laid before the Governor of Rhode Island. Among other things the consul was instructed "to represent, in plain terms, to the Governor," that if any affront or insult were put upon any of his people he would "come in with His Majesty's ship under my command, and protect my own people." In conclusion he declared:

"I am resolved to be treated in the same manner, in all respects whatever, as they do those of the French republic; and I am more plain in the nature of my present demands, as I have received a hint that, if I send my people on shore, while the *Medusa* lies at Newport, they will be considered as spies. In this case I want to spy nothing. I am in full possession of every intelligence regarding that ship, which I want to be possessed of. And I require a written answer from the Governor of Rhode Island to these demands, and that without loss of time."

Such was the tone which the officer of a foreign nation could take to us at a time when, as Pickering regretfully observed, we were without "a naval force to *compel* a due respect to our rights." The satisfactory intelligence to which Captain Home adverted in this stand-and-deliver letter of July 31, 1795, was probably the news that Fauchet had taken passage from New York to Newport on a coasting-packet, to embark on the *Medusa* for his return home to France. The next day, August 1, the packet-boat was stopped within American territorial waters by Captain Home's orders, as she neared Newport, and Fauchet's baggage was searched. Fauchet himself, having received timely warning, had left the packet-boat at a Connecticut port, taking with him his important papers, and proceeding to his destination by land. Availing herself of a dense fog the *Medusa* put to sea with Fauchet on board. She was not out over a dozen miles before the *Africa* was in pursuit, but not at sufficient speed to overtake the *Medusa*, which reached France in safety.

Of course Adet promptly demanded satisfaction for this "insult . . . on the neutrality of the United States . . . this outrage committed towards the republic of France." His letter addressed to Secretary Randolph, bore date August 19, which was the very day on which Randolph was quitting office. The duty of reply fell to Pickering. For some time he was unable to make any answer. The national government at that time had no available force under its direct control. Its little army was posted on the western frontier; its little navy was a-building but was not yet ready for service. The Government then had to depend upon state authority for the

supply of military force to meet any sudden emergency, and this seemed to be rather a slim resource for dealing with a British line-of-battle ship. Nevertheless measures were taken that proved to be effectual. They were promulgated by Pickering in a group of dispatches, issued on September 5. The British consul who had transmitted Captain Home's "indecent and unjustifiable" letter, was notified that having thus co-operated in "grossly insulting" the Government by whose authority he exercised his office, he would no longer be permitted to perform consular functions in the United States. The Governor of Rhode Island was requested to communicate the demands of the President of the United States that Captain Home should "immediately remove from a station within the jurisdiction of the United States, where he has violated and continues to violate their rights, and that he forthwith liberate the three seamen" that he had taken from an American ship in American waters. Furthermore, that "48 hours after these requisitions shall be communicated to him, all intercourse between the citizens of the United States and the ship under his command shall be forbidden." A communication of the same date was sent to Adet, notifying him of these measures, and also that a demand for reparation would be made upon the British Government.

It is noticeable that the only one of these measures that bore directly upon Captain Home and his ship was the declaration of non-intercourse. There was no means of making the *Africa* remove if her commander was determined not to remove, and as his guns commanded the harbour he was in a position to enforce his requisitions. But with the escape of the *Medusa* the cause of

the *Africa's* presence there had been removed, and she sailed away. The British Government did not uphold the conduct of its agents in this case, but some attempt was made to excuse the behaviour of the consul on the ground that he was inferior in rank to Captain Home, and was bound to obey his orders. Pickering would not admit this as a justification of the consul's behaviour, and he was solicitous that none of our representatives abroad should offend in this direction. In a letter to the secretary of legation in London, he made some suggestions which can scarcely be improved upon as a rule of diplomatic behaviour. He said:

“When, in the correspondence from this office, the feelings and resentments of the people of the United States are expressed in warm and indignant terms, it is by no means intended that the language of such letters should be used in addressing a foreign court. The prudence and discretion of the minister or agent is relied on to express those feelings and resentments; and the expectations of redress, in terms adapted, not only to the nature of the case . . . but even to its pride; for, while this passion repels whatever wears the semblance of reproach, it often yields to mild language, and firm but respectful representations; and always, where peace and friendship are the objects of pursuit, words as well as actions must be conciliatory.”

In view of the opinions which Pickering held about his predecessor, it was natural that he should take early steps to correct any wrong impression that Monroe, in

Paris, should have received from Randolph's letters. No sooner had he disposed of the pressing business that confronted him in taking charge of the Department than he addressed himself to the task of sending fresh instructions to Monroe. His dispatch of September 12, 1795, is signed by him as "Secretary of War, charged with the Department of State." This long communication is a calm survey of the foreign relations of the United States, with frank recognition of the hard realities of the situation. Incidentally it makes a systematic presentation of Pickering's views of our national interest, views by which his statesmanship was always guided.

The dispatch opens with an examination of the bearing of Jay's Treaty on our previous treaty with France, particularly the eighteenth article of Jay's Treaty by which, it was held by France, the United States had relinquished its neutral rights. Pickering was unable to deny this *in toto*, but he argued that we had not given up any neutral rights "the exercise of which would have been beneficial to France." It was to the interest of the United States to diminish the catalogue of contraband articles as much as possible. The interest of Great Britain did not lie in that direction, and she had refused to make concessions which the United States had demanded.

"The treaty," observed Pickering, "has barely recited in the list of contraband what was before so, under a law which we could not mitigate; and, though we were desirous of relaxing the rigor of this law, yet a recital of it, in the present treaty, was the best that could be done, and was necessary, in order to admonish our maritime and commercial citizens of a risk which really existed." A time of war, Pickering went on to say, was not

a propitious season for inducing "a powerful maritime nation to make concessions in favor of a neutral and defenceless commerce." Although at that time the United States was acquiring naval armament, under Pickering's own direction, he did not advert to that fact, nor hold out any hope that the situation would be modified thereby. He declared: "The degree of security which we enjoy is well known to depend more upon the common wants of the nations at war, than upon any exertions which we can immediately make of an offensive nature."

The British pretensions which the United States opposed would still be "strenuously opposed by all reasonable means which may offer," but it was not reasonable to go to war with Great Britain on that issue. As to what the consequences of war with England would be, he gave this terrific account, in which it is interesting to note that direct taxation figures as a calamity:

"Our landed, as well as commercial interests would suffer beyond all calculation. Agriculture, above the supply of our own wants, would be suspended, or its produce perish on our hands. The value of our lands and every species of domestic property would sink. The sources of revenue failing, public credit would be destroyed, and multitudes of our citizens, now depending on its preservation, be involved in ruin. The people at large, from the summit of prosperity, would be plunged into an abyss of misery too sudden and too severe patiently to be borne. To increase their calamities, or make them felt more sensibly, direct taxes must be levied to support the war, and it would be happy for us if we could contemplate only a foreign war, in which all hearts and hands might be united."

He argued that the effect of such war would be injurious to France too, since American supplies would then be cut off, whereas by continuing our neutrality, "the benefits we may render to France and her colonies, are immense."

Although Great Britain would not concede exemptions claimed by the United States, it had been conceded by treaty stipulation that "wherever provisions, and other articles not generally contraband, shall become such, and for that reason be seized, they shall be confiscated, but paid for, with a reasonable mercantile profit, including freight and the expenses incident to the detention." Pickering pointed out that this arrangement would certainly encourage the export of provisions to France since shippers were assured of a market in any event.

It may be noted that the position the British Government took then is about the same it occupied during the late war with Germany. Events have not tended to diminish the catalogue of contraband articles, as the United States desired, nor in general to enlarge neutral rights. The mechanical resources of war have been so enlarged as to give military value to many articles that were not formerly supposed to possess it. Neutral rights have tended to narrow, rather than to enlarge. The belief that war can be restricted to the combatants primarily engaged, and that definite limits can be put to the disturbance caused to other nations, seems to be less and less practicable as the world goes on.

The dispatch expatiated at considerable length upon the reasons why France and the United States should remain on good terms. If anything could weaken the attachment of the American people to the French nation,

“it would be a recurrence to such disorganizing projects and outrages on the sovereignty and dignity of the United States as marked and disgraced the ministry of Genet.” In conclusion Monroe was advised that “as nothing has yet happened which renders it in any degree probable that the United States will become a party in the existing war, every intimation which may invite the expectations and enterprises of the French Government, calculating on such an event, is therefore carefully to be avoided.”

In reading this dispatch some surprise may be felt that Pickering, who had been so active in the Revolutionary War, should now take such a gloomy view of the consequences of a rupture with England. An allusion made in the dispatch to experiences during that war, brings out distinctly his point of view. For a long period before 1774 the British Government treated the rising of the colonists as an ordinary insurrection to be put down by the regular army, and, although forces were sent out for that purpose, no effort was made until that year to close the American ports to commerce, and New England shipping interests remained in a flourishing condition. But, remarked Pickering, “a different arrangement in the latter period of that war totally changed the scene . . . and our mercantile shipping fell a sacrifice to the vigilant operations of the British navy.” It was and always remained with Pickering a prime object to avoid a repetition of that disaster. Notwithstanding the annoyances and depredations to which American commerce was exposed, Pickering declared that it had “continued to be lucrative and extensive.” He then remarked: “How preposterous is that policy which requires us to abandon

and destroy the very object, for the preservation of which we are invited to commence hostilities!"

This prudential attitude characterizes all Pickering's dispatches. In the then state of our affairs it was really the only course open to a sensible trustee of our national welfare.

CHAPTER IV

PASSIONATE DIPLOMACY

THERE were several cases at this period involving alleged infractions of the neutrality laws of the United States, and owing to the different circumstances in which Great Britain and France were placed the proceedings bore far more heavily on France than on Great Britain. In struggling against British supremacy on the seas, France tried to use its West Indian islands as points from which British commerce could be attacked, but for the armament of the vessels it fitted out it had to depend largely upon the United States. So a vessel that on one visit figured as an ordinary trader, and as such had managed to get by stealth some powder and guns, might on her next visit appear as a vessel belonging to the French navy, and as such entitled to the freedom of our ports. Cases of this nature were apt to provoke litigation, which would detain the vessels and defeat the purpose for which they had been commissioned. The case of *Le Cassius* was typical of proceedings which were extremely irritating to the French Government. Even more so was the case of *La Vengeance*, very similar in its character to that of *Le Cassius*. Adet bitterly remarked that in the case of *La Vengeance*, "all the officers of the district court (except the judge) were interested in the condemnation of the privateer." It was a fact that both the district attorney and the clerk of the court appeared in this case as attorneys in private suits, as well as in their official capacity in connection

with the enforcement of the neutrality laws. The explanations which these officials supplied to the State Department are sufficient to acquit them of any suspicion that this dual capacity prejudiced the course of justice, but such an arrangement could not but look extremely suspicious to the French minister.

Furthermore, it appeared that a libel could be filed against a vessel, without any affidavit or other evidence to verify the allegations on which the suit was founded. In ordinary circumstances the fact that the libelant would be liable for costs and damages if he could not establish his case, might be regarded as sufficient to prevent abuse of such process, but the case was quite different when a ship of war was concerned. The process then meant that by meeting the expenses of litigation she could be put out of action, and just that happened in several cases. *La Vengeance* was condemned by the district court, but on appeal the sentence was reversed and eventually the case was decided in favour of the vessel, but the proceedings had lasted over a year and meanwhile the vessel had been sold, at a "tenth part of the cost of her armament," Adet declared.

If the French minister had taken the position that the procedure should have been put under more stringent control, in case of a vessel claiming to belong to the French navy, he would have had good ground on which to stand. What he did was to protest that the courts had no right to take any jurisdiction whatever in such cases, and that the obligation rested upon our Government of protecting French public vessels against such proceedings.

So it happened that at this period, in any conflicts

which arose over the application of our neutrality laws, the sufferer was usually France, while Great Britain was content with the situation. Hammond, the British minister, had returned home to become under-secretary for foreign affairs, and correspondence between the two governments was at this time carried on mainly at London, through the agency of our minister there. The British Government did not desire to add the United States to the number of its enemies, and its attitude was conciliatory, except on the matter of impressment, as to which it would not yield a particle of its ancient claim of the right to require the service of its subjects wherever she might find them. But in its notes the conventional politeness of diplomatic intercourse was always preserved, and any position taken was supported by calm argument. In the French Republic at this period display of the emotions was freely indulged in the conduct of public affairs, and was indeed regarded as a mark of sincere patriotism.

A circumstance which aggravated the resentment of France at American policy was our cool response to ardent overtures. Adet had been instructed to present the colours of France to the United States together with a copy of a fraternal address from the Committee of Safety of the National Convention of France to our Congress. Adverting to the fact that the flag of the United States was displayed in the National Convention in conjunction with the flag of the French Republic, the address enlarged in enthusiastic terms upon the close union of the interests of the two nations symbolized by this juxtaposition of their colours. It concluded with the glowing prophecy:

“Astonished nations, too long the dupes of perfidious Kings, nobles and priests, will eventually recover their rights, and the human race will owe to the American and French nations their regeneration and lasting peace.”

Adet presented the stand of colours, together with this address, to President Washington on New Year's Day, 1796, a day selected by Washington himself as appropriate to the purpose, it being “a day of general joy and congratulation.” Adet delivered the colours with an address celebrating the ties of affection existing between the two countries, concluding with a declaration of his conviction

“that every citizen will receive, with a pleasing emotion, this flag, elsewhere the terror of the enemies of liberty, here the certain pledge of faithful friendship; especially when they recollect that it guides to combat men who have shared their toils, and who were prepared for liberty, by aiding them to acquire their own.”

Washington in his reply did his best to rise to a suitable height of feeling with the result that his address has glow and fervour rare in his utterances. “To call your nation brave,” he told Adet, “were to pronounce but common praise.” He then proceeded:

“Wonderful people! Ages to come will read with astonishment the history of your brilliant exploits! I rejoice that the period of your toils and of your immense sacrifices is approaching. I rejoice that the interesting revolutionary movements of so many years

have issued in the formation of a constitution designed to give permanency to the great object for which you have contended. I rejoice that liberty, which you have so long embraced with enthusiasm—liberty, of which you have been the invincible defenders—now finds an asylum in the bosom of a regularly organized government;—a government, which being formed to secure the happiness of the French people, corresponds to the ardent wishes of my heart, while it gratifies the pride of every citizen of the United States by its resemblance to its own. On these glorious events, accept, Sir, my sincere congratulations.”

Doubtless, by reason of his office, Pickering had a hand in preparing this address. The utmost pains were taken to make the occasion agreeable to Adet and he certainly could not complain of any lack of warmth in the President’s language, but he felt aggrieved at the disposition made of the colours he had presented. The President promptly transmitted to Congress copies of the addresses together with the announcement that “the colours will be deposited with the archives of the United States.” This did not please Adet, for what he wanted was that the colours should be displayed in the hall of the House of Representatives. He wrote to Pickering, complaining that “it has been decided that the French flag should be shut up among the archives,” and he remarked that this would be looked upon by France “as a mark of contempt or indifference.” He put it up to Pickering: “Would it not be convenient to fix this flag in a similar place to that which yours occupies in France, and where the national honour expected to see it?”

Here was a delicate situation! Notwithstanding all the pains that had been taken to make everything pleasant, Adet felt hurt and offended. Pickering took six days in which to compose his answer, which was entirely equal to the occasion in its tact, suavity and ingenuity. He had to admit that the French flag had not been treated as the American flag had been by France, but this resulted from the different ideas the two free peoples entertain "of the mode most proper for preserving the signs of their liberty, and of the victories and triumphs by which it was acquired." He pointed out that the authority of the French nation was concentrated in its National Convention, whereas that of the American nation is distributed between the President, the Senate and the House of Representatives, and that "the President is the sole constitutional organ of communication with foreign nations; and for this purpose the people have appointed him as their *sole representative*." Hence when the colours were delivered to the President, "they were in the only proper manner presented to the people of the United States," and under these circumstances, "what honour could be shown to the colours of France more respectful than to deposit them with the evidences and memorials of our own freedom and independence?"

Having thus repelled the imputation of discourtesy to France, Pickering now stated what the United States demanded on its side in the way of courtesy, and he was quite firm in his presentation of the case. He said:

"I must also remark, that the people of the United States exhibited nowhere, in their deliberative assem-

blies, any public spectacles as the tokens of their victories, the symbols of their triumphs, or the monuments of their freedom. Understanding in what true liberty consists, contented with its enjoyment, and knowing how to preserve it, they reverence their own customs, while they respect those of their sister republic. This, I conceive, Sir, is the way to 'maintain peace and harmony between France and the United States,' and not by demanding of one nation an adoption of the manners of the other; in these we must be mutually free."

The firm but tactful reply seems to have silenced Adet on this matter, but he soon found another point of etiquette on which to found a complaint. He called Pickering's attention to the fact that an almanac had been issued in Philadelphia, which in its list of the diplomatic corps, gave the first place to Great Britain instead of to France, which had always previously held the precedence. Adet requested that steps should be taken to rectify this error "by suppressing the publication and the distribution of the directory and other almanacs in which it had been committed." Or, if such action was not allowable by American law, he desired a formal avowal by our Government that the injurious publication had not been made by its consent, which disavowal he should be at liberty to publish in the newspapers.

Pickering in his reply observed that Adet was quite right in his supposition that "works of this kind are not here, as in Europe, edited under the direction of the Government. They are all the property of individuals who print what they please, and in such order as their

ideas of propriety, or humor, or accident, may direct." He called attention to the fact that in the *Massachusetts Register* for 1796, the French Republic stood at the head of the list and Great Britain was at the foot, but he added:

"It is not necessary for me to express any opinion whether this arrangement is erroneous or correct, or whether, among nations equal by their sovereignty and independence, there can be any precedence of right," and that the United States "will not attempt by any official arrangement, voluntarily to determine questions of rank among foreign powers."

Events were now plainly moving towards a rupture. Adet in subsequent notes had principally in mind the effect they would have on public opinion, and they became still more rhetorical in style and impassioned in their appeal. A note of September 29 had remained unanswered, and Adet complained of the delay. Replying under date of November 1, 1796, to this and other accusations, Pickering asked:

"Can it be matter of surprise that there should be a repugnance to answer a letter containing such insinuations as these:

"It must, then, be clear, to every man who will discard prejudices, love, hatred, and in a word, all the passions which lead the judgment astray, that the French republic would have a right to complain if the American government suffered the English to interrupt the commercial relations which exist between her and the

United States; if, by a *perfidious* condescension, it permitted the English to violate a right which it ought, *for its own honour and interest*, to defend; if, under the *cloak of neutrality*, it presented to England a poniard to cut the throat of its faithful ally; if, *in fine*, *partaking in the tyrannical and homicidal rage of Great Britain*, it concurred to plunge the people of France into the horrors of famine.”

Having quoted this passage and italicized its most objectionable phrases, Pickering made no further comment save to remark, that “for the sake of preserving harmony, silence was preferred to a comment on these insinuations.” As Adet had given his note to the newspapers, so now Pickering did the same.

An open breach soon followed. On October 27, 1796, Adet transmitted to Pickering a notification from the French Government that when commercial advantages secured by treaty “should turn to the benefit of our enemies, either through the weakness of our allies, or of neutrals, or through fear, through interested views, or through whatever motives, would, in fact, warrant the inexecution of the articles in which they were stipulated.” It had, therefore, been decreed that all neutral vessels would be treated by France “in the same manner as they shall suffer the English to treat them.”

Pickering in his reply observed that the American Government was left “in a state of uncertainty of the actual intentions of the government of France.” He proceeded:

“Allow me, then, to ask whether, in the actual state of things, our commerce is considered as liable to suffer any new restrictions on the part of the French repub-

lic? Whether the restraints now exercised by the British government are considered as of a nature to justify a denial of those rights which are pledged to us by our treaty with your nation? Whether orders have been actually given to the ships of war and privateers of the French republic, to capture the vessels of the United States? And what, if they exist, are the precise terms of these orders?"

Adet made immediate reply that he would soon furnish more ample information, and on November 15, 1796, he sent a long communication in which not one of the specific interrogations from Pickering was answered. Probably Adet did not really have the exact information desired, but he recapitulated the grievances of France, in consequence of which it had changed its policy towards the United States. The note opened in this grandiloquent style:

"The undersigned, minister plenipotentiary of the French republic, now fulfils to the Secretary of State of the United States, a painful but sacred duty. He claims, in the name of American honour, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people, the freest upon earth. In a word, he announces to the Secretary of State the resolution of a Government terrible to its enemies, but generous to its allies."

In the course of this remarkable communication as a contrast to the way in which the United States treated

France, he gave this account of what the attitude of France had been:

“Let the annals of the French revolution be opened; let the minutes of that august sitting be seen, in which the National Convention received the Minister of the United States into its bosom. The addresses were not studied; they sprang from hearts full of affection for an allied people; they breathed the feelings which dictated them, and the American minister found himself in the midst of his friends. What joy did not the American flag inspire when it waved unfurled in the French Senate? Tender tears trickled from each eye; every one looked at it with amazement! There, said they, is the symbol of the independence of our American brethren; behold there the pledge of their liberty! May victory always attend it! May it lead to glory none but a free and happy people! These words which escaped from a thousand mouths, were the expression of the sentiments of the whole nation. Was not an American to each Frenchman another Frenchman? He was more—he was a friend; and that sacred name, amidst civil dissensions, was equally respected by all.”

In high-flown rhetoric the Government of the United States was reproached for having made a treaty with England, “the implacable enemy of their ancient ally.” The communication concluded with this outburst:

“Oh! Americans, covered with noble scars! Oh, you who have so often flown to death and to victory with French soldiers. You who know those generous senti-

ments which distinguish the true warrior! You, whose hearts have always vibrated with those of your companions in arms! Consult them today, to know what they experience; recollect, at the same time, that, if magnanimous souls with liveliness resent an affront, they also know how to forget one. Let your government return to itself, and you will still find in Frenchmen faithful friends and generous allies.”

Although this dispatch was accented by such emotional outbursts, it was not deficient in argumentative force. Referring to the way in which the neutrality act had been administered, Adet declared:

“In consequence of this law, the greater part of the French privateers have been arrested, as well as their prizes; not upon formal depositions, not upon established testimony, not upon a necessary body of proofs, but upon the simple information of the consul of one of the powers at war with the French republic; frequently upon that of sailors of the enemy powers; sometimes according to the orders of the governors, but often upon the demand of the district attorneys, who assert, upon principles avowed by the government, that their own conviction was sufficient to authorize them, without complaint or regular information, to cause the privateers to be prosecuted in virtue of the law above mentioned.”

This indictment was supported by copious citation of evidence, in which the case of *La Vengeance*, and that of *Le Cassius* figured in minute detail. The note declared

that in just resentment of the conduct of the American Government his own Government had suspended his ministerial functions, "to last until the government of the United States returns to sentiments and to measures, more conformable to the interests of the alliance, and the sworn friendship between the two nations."

This note was of course a manifesto to the people of the United States. Adet gave it as much publicity as he could. A summary of its contents, with extracts from it, appeared in print before a full translation had been made in the State Department. Pickering accepted its delivery as ending all correspondence with Adet, and he made no direct reply to its allegations.

At this time Washington's second term was drawing to its close. His Farewell Address had been issued. The choice of the presidential electors who were to choose his successor was impending, and Adet was doing everything he could to influence the result. His notes to Pickering for some time past had been of the nature of campaign documents, and they were not ineffectual. The turnover in Pennsylvania, by which the Federalists lost all the electoral votes of that state save one, was attributed to the alarm felt among the Quakers at the prospect of a war with France.

Pickering was strongly of the opinion that in its dealings with Adet our Government had suffered much because its position had not been properly explained and impressed upon the French Government by Monroe, our minister in Paris. The French Government had indeed received the impression that he did not at all approve the course Washington's Administration was pursuing

toward France, so there was no influence at work to counteract the effect of Adet's reports. Washington was much displeased by this state of affairs, and on June 13, 1796, Pickering wrote a letter of censure to Monroe, in the course of which he observed: "You have here the sensations of the President in relation to the line of conduct you have pursued." Monroe was urged to put before the French Government the case of our Government, as set forth in detail in Pickering's letter of September 12, 1795.

"With such means in your hands," remarked Pickering, "means amply sufficient to vindicate the conduct of the United States—not less regret than surprise is excited, that no attempt was made to apply them to the highly important use for which they were sent."

The tenor of Monroe's communications arriving after the sending of this letter was such as to increase Washington's dissatisfaction and under date of August 22, 1796, Pickering wrote to Monroe that he would be superseded by General Charles Cotesworth Pinckney of South Carolina, who would bring with him Monroe's letters of recall.

The instructions which Pickering drew up for Pinckney's guidance, reviewed from the beginning the relations between France and the United States. It was time, Pickering observed, that the French claims to our gratitude were investigated and their extent ascertained. He cited certain diplomatic transactions during our war of independence as evidence that the benefits which the United States had received from France, had "resulted from her exertions to advance *her own interest* and secure *her own safety*." The peace negotiations of

1782 were examined in detail to support the assertion that France tried to accomplish a settlement which would leave the United States dependent upon her protection. "To keep us thus far dependent," remarked Pickering, "was manifestly the object of certain measures of the French Court, calculated to deprive the United States of an immense western territory, of the navigation of the Mississippi, and of the fisheries, except on our own coast." The various complaints against the United States made by Genet, Fauchet and Adet were considered *seriatim*, and evidence was presented to show that our Government had not been at fault. "Hence," remarked Pickering, "we rely on the repeal of the decrees and orders which expose our commerce to indefinite injuries, which militate with the obligations of treaties, and our rights as a neutral nation." Appended to this statement were copies of notes that had been exchanged between Pickering and Adet.

This letter to Pinckney was Pickering's most famous state paper. While the form was that of a diplomatic note the style and contents show plainly that it was actually a political manifesto. It was the Federalist party defense against the charges of Adet and the attacks that were being made upon the policy of the Administration. It was dated January 16, 1797, and on the 19th it was laid before Congress, by whose order it was printed, making a pamphlet of a hundred pages.

Pinckney never had an opportunity to put before the French Government the views expressed in Pickering's note. When he arrived in Paris the French Government refused to receive him, but a grand farewell reception was arranged for Monroe, in which he was complimented

as one who had known his country's true interests. Pinckney demanded an explanation as to his own status, which was not supplied until some weeks later when he was notified that as a stranger remaining in Paris without permission he was rendering himself liable to arrest. This was of course the final rejection of Pinckney's mission and he procured passports and left for Holland.

The rupture of diplomatic relations between the two governments was now complete.

CHAPTER V

BEGGING FOR PEACE

IN his last address to Congress, December 7, 1796, Washington urged the need of armament for the protection of national interests:

“To secure respect to a neutral flag requires a naval force, organized and ready to vindicate it from insult or aggression. This may even prevent the necessity of going to war, by discouraging belligerent powers from committing such violations of the rights of the neutral party as may, first or last, leave no other option.”

There was so much opposition in Congress to assuming the burden of a naval establishment that only the refusal of the Dey of Algiers to make peace on any terms whatever had induced Congress to pass the Act of March 27, 1794, authorizing the construction of some armed cruisers for the protection of American commerce. But it provided that if peace terms could be arranged “no further proceedings be had under this Act.”

One of the last things President Washington did was to lay before Congress a report from Pickering, of date January 6, 1797, giving an account of the peace terms that had been arranged with Algiers. Altogether the money paid for ransom of prisoners, tribute and presents to officials amounted to \$642,500. In addition the United States agreed to build a frigate for the Algerine navy and also to supply naval stores which with incidental

expenses brought the total cost of the settlement up to \$992,463.25. In addition the United States obligated itself to pay an annual tribute in maritime stores, which with the cost of delivery was estimated to cost the United States \$144,246.63 for the first two years' annuity. We have seen, in the previous sketch of Jefferson, that this cost more than the navy then building.

Similar negotiations went on about the same time with the Bey of Tunis. The treaty, which was concluded November 14, 1797, included this remarkable stipulation:

“Art. 13. If among the crews of merchant vessels of the United States there shall be found subjects of our enemies, they shall not be made slaves, on condition that they do not exceed a third of the crew; and when they do exceed a third, they shall be made slaves.”⁴

Under the terms of the Navy Act, the peace treaty with Algiers put a stop to naval construction, and only the vessels which were nearing completion were spared. These were the frigates *Constitution*, *United States*, and *Constellation*, which were eventually completed. The timber and material that had been collected for building other vessels was either sold or utilized for the tribute paid to the Algerines.

France and England were, of course, well aware of all these transactions which, it must be owned, were not such as tended to fortify the position of the United States in dealing with those nations. Notwithstanding the extent of our national resources, our Government was not possessed of any means for defending our national interests, save through remonstrance and entreaty. John

Adams succeeded to the Presidency on March 4, 1797. In his inaugural address he declared his intention "to pursue, by amicable negotiation, a reparation for the injuries that have been committed on the commerce of our fellow citizens, by whatever nation, and, if success cannot be obtained, to lay the facts before the Legislature, that they may consider what further measures the honor and interest of the government and its constituents demand." At that time there was nothing more that he could do, although he was entirely in accord with Washington in appreciating the importance of an armed navy as a peace-maker.

In the interest of "amicable negotiation," American vessels were not even allowed to take measures in their own defense, at their own cost. On April 8, 1797, a circular letter was sent to all collectors of the Customs directing that "the sailing of armed vessels, not bona fide destined to the East Indies, be restrained." An exception was made in favour of the East Indian trade, because of the special danger to which it was exposed of attack by pirates. It was conceded that for a vessel to defend itself "by means of military force, against mere pirates and sea rovers, is lawful." But as "the arming of vessels destined for European or West India commerce raises a presumption that it is done with hostile intentions against some one of the belligerent nations," it could not be permitted.

The defenseless situation of American commerce of course made it easy prey. The English stopped ships and took what they wanted, but generally paid for what they took. At this period the principal complaint against England was on the score of impressment of seamen. The

provisions of Jay's Treaty with regard to the evacuation of the British posts in the western country and the demarcation of boundaries, were being carried out and the relations of the two countries were now on a good footing, save in this matter of impressment. Great Britain did not claim the right to impress American citizens, but only British subjects counting among them American naturalized citizens. In practice it appears that not much pains was taken to discriminate between British subjects and American citizens when men were needed, and it must be owned that it would often be difficult to say which was which when both spoke the same language and were of the same race stock. And there were some cases in which claims of American citizenship turned out to be false. So it generally happened that in impressing sailors British commanders took the men they wanted without paying much attention to their protests.

Communication between the two governments about these matters was at this period carried on through our minister to Great Britain, Rufus King, who met with some success in obtaining the release of American sailors. In a dispatch of April 13, 1797, to Pickering, King reported that notice had reached him of 271 cases of impressment of American citizens. Of these he had obtained the discharge of 86, in the case of 37 his claim had been rejected, and as regards the remaining 148 cases no decision had been reached, "the ships on board of which these seamen were detained," King remarked, "having, in many instances, sailed before an examination was made in consequence of my application."

So long as the taking of persons from American ships

on the high seas was allowable on any ground whatever, it was impossible to make out a strong legal case against impressment. When Tunisian corsairs had been officially acknowledged to have slave-hunting rights on board American vessels, the United States was certainly not in a position to assert the principle that the American flag carries with it a right of asylum.

In refusing to receive Pinckney, the French Government had declared that "it will no longer recognize nor receive a minister plenipotentiary from the United States, until after a reparation of the grievances demanded of the American government, and which the French republic has a right to expect." The practical significance of the course which France was now pursuing was revealed by a decree of March 2, 1797, which abrogated the treaty of 1778 as regards neutral rights, and substituted the provisions of Jay's Treaty, the seventeenth article of which provided that vessels might be "captured or detained, on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war." The decree set forth that the French Republic still contended for the principle of "full and entire freedom of commerce and navigation," and it was provided that the decree should cease to have effect as soon as neutral ships bound for French ports should be no longer subject to seizure. Except for one decree the French position as officially stated had an equitable aspect, but a dark stain was put upon it by a decree that "every American who shall hold a commission from the enemies of France, as well as

every seaman of that nation” serving on an enemy vessel, shall be declared “piratical and treated as such.” Our minister in England was officially advised that notice had been served on France that “the first instance of the execution of this decree shall be followed by the most rigorous retaliation against the French prisoners.” It does not appear that any attempt was made to enforce the piratical decree, but wherever American vessels could be got at they were captured. If they entered a French port they were liable to be seized and confiscated. According to the letter of the French decrees only merchandise belonging to enemies was to be confiscated and other property was to be paid for; moreover, a just indemnity was to be allowed for detention of neutral vessels. But in practice the owners of vessels captured or detained were generally unable to obtain any compensation, or it might be tendered in paper money of little value. In a report dated February 27, 1797, Pickering mentioned cases in which payment was offered “in *assignats* at their nominal value, and afterwards, in another species of paper called *mandats*, which had suffered a great depreciation, even before they were put into circulation.” Most of the depredations upon American commerce were committed by French privateers who carried their prizes to West Indian ports, where there was a strong disposition to decide every issue in their own favour. Depredations upon the undefended commerce of the United States took rank as an exceptionally safe and lucrative industry, and it appears that there was a considerable American investment in it. In an address to Congress, May 16, 1797, President Adams said:

“The greater part of the cruisers whose depredations have been most injurious, have been built, and some of them partially equipped, in the United States . . . If a mode can be devised by the wisdom of Congress, to prevent the resources of the United States from being converted into the means of annoying our trade, a great evil will be prevented. With the same view, I think it proper to mention that some of our citizens resident abroad, have fitted out privateers, and others have voluntarily taken the command, or entered on board of them, and committed spoliations on the commerce of the United States.”

From a report by Secretary Pickering, transmitted to Congress, June 22, 1797, it appeared that 316 American vessels had been captured by French cruisers since July 1796. Captures by Spanish privateers were also becoming numerous. In the report Pickering made this grave accusation:

“There have been frequent accounts of attempts to effect condemnation by bribing the officers and seamen of our vessels to swear falsely; but it was reserved to these times, when offered bribes were refused, and threats despised, to endeavor to accomplish the object by torture. This was inflicted by a French privateer.”

The sufferer in this case was the master of a Baltimore vessel, bound for London. In transmitting an account of the affair Rufus King remarked: “It is impossible that these barbarous outrages should be authorized; indeed the concealment observed by the perpetrators of them,

who refused to tell their names or the port of their equipment, evinces that they are not so." In fact privateering, having merely private gain for its motive, was so much akin to piracy that it was apt to behave like piracy, and this eventually caused it to be forbidden by international law.

It is quite noticeable that the tone of Pickering's reports at this period is not at all in accord with that of President Adams's declarations. Pickering's papers impress one as having been influenced by a desire to stir up feeling against France, and certainly they were not such as would be likely to promote the amicable overtures which President Adams had decided to make. Pickering was indeed strongly opposed to any further parley along that line. He did not believe that anything was to be gained by a suppliant attitude, but rather that the nation should now take steps to protect its interests through its own might. In taking this position he had the active support of Secretary Wolcott, and probably the entire Cabinet felt the same way. This seems to have been the general opinion among the Federalists, and much uneasiness was felt when it became known that Adams was conferring with Jefferson on the situation. Adams thought it likely that diplomatic relations with France might be restored by sending out a mission whose very make-up would be an irresistible offer of friendship. So he wanted Jefferson to head the mission, but regretfully agreed with him that it would be unwise for the Vice President to put himself at such a distance from the seat of government. Then Adams urged that Madison ought to go and he requested Jefferson to approach him on the subject.

Meanwhile Adams had not consulted Pickering or any of the heads of departments, and their attitude to his policy was becoming decidedly hostile, when Alexander Hamilton intervened. His views of policy coincided with Adams's own, although on different grounds. He had no expectation that such a mission would be successful, but he thought it very important that the attempt should be made because of the effect it would have upon the domestic situation. At that time Bonaparte's victories were exciting great popular enthusiasm in the United States. Hamilton feared that Great Britain would find its position so difficult as to constrain it to seek peace, in which case the United States would be exposed to the full might of France. In the interest of national unity it was therefore of supreme importance that nothing should be left undone to show that every effort had been made to avert the conflict. Both Pickering and Wolcott were in the habit of consulting Hamilton on all important matters of public policy, and he now put his views before them with characteristic energy.

Hamilton held that the selection of Madison was a wisestroke of policy, and he regretted Madison's declination. In general, Hamilton strongly supported the policy of the Administration at this juncture, with the exception of the order prohibiting the clearance of vessels if armed. The inability of the Government "to protect the merchants requires that it should leave them to protect themselves," and he did not think that that would have a bad effect on our relations with France.

The mission to France as finally made up consisted of C. C. Pinckney, Elbridge Gerry and John Marshall.

President Adams had been much in favour of including Gerry, ever since the failure of the negotiations with Jefferson and Madison, but every member of his Cabinet objected. Adams gave way at the time, selecting Chief Justice Dana of Massachusetts instead, but Dana declined the appointment and Adams then nominated Gerry without further consultation with his Cabinet.

The instructions to the envoys, of course, bear Pickering's signature, since they issued from the State Department, but they are not at all in his style. The internal evidence suggests that John Marshall's pen was employed upon them, in conformity with the common diplomatic practice of preventing misunderstanding by having the envoy draft his instructions. All offensive expressions were avoided and they were throughout conciliatory in tone. In previous documents of this character the aim had been to vindicate the behaviour of our Government, and copious argument had been employed to support the contention that the concessions made to Great Britain by Jay's Treaty inflicted no injury on France, although they put our relations with Great Britain on a footing different from that of France as stipulated by the treaty of 1778. The instructions now issued take an altogether different line. It was set forth that we were entirely willing to modify our treaty with France to make our status with her exactly what it was with England under Jay's Treaty. Moreover the United States would be perfectly willing to renounce the reciprocal guaranty contained in the 11th article of the treaty of alliance. By this article France was to defend "the liberty, sovereignty and independence of the United States,"

while the United States was bound to defend "the possessions of France in America." The instructions remarked that, "France, powerful by her victories and secure in her triumphs, may less regard the reciprocal guaranty with the United States and be willing to relinquish it."

Marshall and Gerry arrived in France about the last of September, 1797, and proceeded to Paris where on October 4, they were joined by C. C. Pinckney, coming from Holland. But they were soon given to understand that they would not be received unless they assented to certain preliminaries, one of which was a present of fifty thousand pounds sterling as a *douceur* to the Directory and their Minister of Foreign Affairs, Talleyrand. The envoys, while firmly resisting such overtures, continued their efforts at negotiation for over two months without any success. Finally, on January 27, 1798, a long statement of our proposals, drawn up by Marshall with his usual argumentative force, was addressed to Talleyrand by the envoys. While they were awaiting an acknowledgment of this communication, one of Talleyrand's secretaries remarked to Gerry, that "such long letters were not to the taste of the French government, who liked a short address coming at once to the point." Talleyrand made no reply until March 18. His note was brief, and it attempted no discussion of the points raised in the American communication, remarking that "the priority of grievances and complaints belonged to the French republic." The note went on to state the French case, which was in the main the same as had been presented by Fauchet and Adet, but was now put in a more dignified way. Talleyrand charged our Government with obstinately pursuing a "system of exasperation and alienation," and

he remarked: "It is, probably, with this view, that it was thought proper to send to the French republic persons whose opinions and connexions are too well known to hope from them dispositions sincerely conciliatory." This was a hit at Pinckney and Marshall. Talleyrand went on to say that the "Directory is disposed to treat with that one of the three whose opinions, presumed to be more impartial, promise, in the course of the explanations more of that reciprocal confidence which is indispensable." That suggested Gerry.

The envoys made a prompt reply, covering the points of Talleyrand's note; and the unfortunate case of *Le Cas-sius* was again gone over in detail, with the same excuse that everything was done by regular legal process. In conclusion notice was given that no one of the envoys had power to act alone apart from the others.

Talleyrand made no direct reply, but on April 3 he sent a note to Gerry, making an appointment with him for further conference, on the supposition that "Messrs. Pinckney and Marshall have thought it useful and proper . . . to quit the territory of the republic." The messenger who delivered the note said that it was to be shown to Pinckney and Marshall. They, of course, acted at once on this plain intimation and left the country as soon as they could arrange for their transportation, but Gerry remained in Paris. On April 4, 1798, he notified Talleyrand that while he could confer only informally, he would do everything in his power "to restore harmony and a cordial friendship between the two republics." Gerry's conduct was directly contrary to instructions then on their way, dated March 23, in which Pickering wrote:

“If on the receipt of this letter, you shall not have been received, or whether received or not, if you shall not be in treaty with persons duly authorized by the Directory, with full and equal powers, you are to demand your passports and return.”

Notwithstanding the explicit directions of this letter Gerry continued his futile negotiations until near the end of July. On June 25, Pickering wrote censuring his behaviour and giving him a peremptory recall.

CHAPTER VI

FIGHTING FOR PEACE

IN May, 1797, at the time Adams was making up the mission to France, Pickering became engaged in a controversy with the Spanish minister. It started along the same line as the controversy with Adet, and was logically a continuation of it. Don Carlos Martinez de Casa Yrujo arrived on the scene as Adet was leaving it, bringing with him a letter of introduction to Pickering from Thomas Pinckney, then minister of the United States in London. Writing under date of April 17, 1796, Pinckney said: "As I have been favored with his acquaintance in this country, the knowledge I have obtained of his amiable manners and accomplishments, makes me desirous of introducing him to your private acquaintance."

Notwithstanding this propitious beginning in their relations, Pickering's correspondence with Yrujo soon became as acrimonious as it had been with Adet. Yrujo's position was similar to that of Adet, and now that the matter is before the tribunal of history, it is undeniable that it was strong in equity. If the American flag conferred immunity from search or seizure of goods by French or Spanish cruisers, while it did not provide like immunity as against British cruisers, it is manifest that in their relations to the United States the continental powers were at a disadvantage. Under the conditions then existing it is scarcely too much to say that the practical effect was to debar France and Spain from inter-

fering with English use of the United States as a base of supplies. This complaint of the effect of Jay's Treaty, which Adet had pressed unavailingly, was renewed by Yrujo. In a note of May 6, 1797, he pointed out that the treaty of October 27, 1795, between Spain and the United States proclaimed "the liberal principle that free ships shall make free goods." He remarked with entire truth that "this stipulation was in reality an incalculable advantage" for American commerce. Yrujo continued:

"In these circumstances, the King, my master, who had so efficaciously advanced the interests of America, promised himself, by the effect of a good correspondence, as sacred among nations as between individuals, that the United States at least would not contribute to the injury of Spain. What would be the surprise of His Majesty on knowing that this country had contracted engagements with England prejudicial to his rights, and to the interests of his subjects, nearly at the same time in which, with so much liberality, he was giving the United States the most striking proofs of the most sincere friendship."

Yrujo, as Adet had done before him, pointed to the seventeenth and eighteenth articles of Jay's Treaty as being particularly inequitable in their consequences. He also criticized the third article, conceding England's claim to the free navigation of the Mississippi. His remonstrance while forceful in its reasoning was calm in tone and polite in language.

Pickering's reply did not go deeply into the merits of the case. He professed that it was idle to say that Spain

could have been surprised by what had taken place. He remarked:

“Permit me to say that the engagements with Great Britain do not appear to offer any cause for ‘surprise’ on the part of His Catholic Majesty: because His Majesty had seen during the whole course of the American war how steadily Great Britain persisted, in opposition to the demands of all the maritime powers, to maintain her claims under the law of nations, *to capture enemy’s property, and timber, and naval stores, as contraband, in neutral ships*. His Majesty had also seen in the present war, in which he was for a time a party with Great Britain against France, that Great Britain continued to avow and practise upon the same principles.”

And so on, and so on! This was sad quibbling. Pickering knew perfectly well that Spain was surprised not at England’s behaviour, but at America’s consent to it. On the Mississippi question Pickering was able to make out a little better case, to the effect that Jay’s Treaty did not disparage Spain’s claim of jurisdiction over the lower Mississippi, but meant only that the United States, acting solely on its own account, did not resist England’s claim to free navigation of the Mississippi.

Another complaint made by Yrujo was that arrangements were going on for attacks upon Spanish territory by an expedition from Canada and also by forays from the United States under British auspices.

Pickering in reply informed Yrujo that the Government had “no knowledge of any circumstances indicative

of such a design" and would take whatever steps were necessary to maintain its neutrality. An investigation of the matter was instituted and reports were obtained from Government officials on the Louisiana border. Moreover, Pickering put the matter up to Liston, the British minister, a proceeding which Yrujo resented. Liston averred that no such expedition "has been, or is, intended by the British Government." A few days later Liston admitted that "in the course of last winter some persons did actually propose to me a plan for an attack on the Floridas and the other possessions of His Catholic Majesty adjoining to the territories of the United States", but he denied giving any encouragement to the project. The fact also became public that United States Senator William Blount of Georgia was a party to this affair. At the next session of the Senate Blount was expelled from his seat, a circumstance which did not prevent him from continuing to be a popular leader in his state.

Correspondence between Pickering and Yrujo over this matter became bitter in tone, and it soon appeared that the Spaniard had a peppery temper of his own. His note of July 11, 1797, said to Pickering: "Nor do your ill-founded insinuations stop here; sentiments and expressions still more violent flow from the same hasty pen." In his reply Pickering observed:

"If, Sir, I were now to make the just remarks and recriminations which your letter obviously suggests, I am afraid you would be still more offended. I am not sure, indeed, that I can possibly frame an answer that will escape your displeasure; but I shall endeavor that it be expressed not in a style indecorous, unusual, and

unbecoming a diplomatic correspondence, while it contains a fair exposition of facts and arguments, in opposition to errors and actual misrepresentations."

Such sarcastic remarks were not likely to promote friendly relations between the two countries. By this time a tone of personal enmity had entered into the relations between Pickering and Yrujo. The Spanish minister intimated that Pickering was conniving with the British minister. When a proposal to impeach Blount was pending before a committee of the House of Representatives, Yrujo brought forward two witnesses, whose testimony Pickering declared was intended to "excite a suspicion of an undue attachment, on my part, to Mr. Liston, the British minister," Pickering said that the testimony was "a tissue of falsehood, and therefore ought not to have been admitted." Writing about this affair to Secretary McHenry, he stated: "The object of the Spanish puppy and his hired witnesses was apparent from the beginning, but I have a perfect contempt for him and them."

Yrujo's anger over the way he was being treated was intensified by a newspaper onslaught of which he was the victim. Under Washington's Administration the guerillas of journalism usually took the French side, but it was quite the other way about with the ablest free-lance of the period, William Cobbett. He came over from England in 1792, and lived for some time at Wilmington, Delaware, where he supported himself by teaching and pamphleteering. In 1796 he settled in Philadelphia and started *Peter Porcupine's Gazette*. Its sharp quills were extremely irritating to Yrujo. In the issue of July 14, 1797,

the secretary of the Spanish legation was told: "The first thought that struck me was that Don de Yrujo was another Quixote, sallied out in search of adventures, and that you were his Sancho Panza, trotting quietly at his heels, discharging his drudgery and dirty work."

Later on the article withdrew the comparison of Yrujo to Quixote, "for the language and manner of the former bear a much stronger resemblance to the silly and brutal reproaches of a French *sans-culotte*, than to the modest though manly remonstrances of the learned and accomplished Knight of La Mancha."

At another time Yrujo was told that he was "improving upon the example of these great masters in insolence," Genet and Adet. The article went on to say: "You are the only nation on earth who can vie with the French in perfidy and cruelty, and therefore it is with singular propriety you call each other your natural allies."

It was difficult for European diplomatists, accustomed to governmental control of press utterance, to believe that Cobbett's attacks were not in some way officially inspired. Yrujo made indignant demands upon Pickering for protection against such insults. Pickering told him that whether Cobbett's ridicule could be stopped would depend on himself; that Cobbett's writings "indicate that he is not of a disposition to be diverted from his humor by any attempts at *constraint*, while he can indulge it without the breach of any law."

This amounted to telling Yrujo that he ought to grin and bear it. Yrujo declined that advice, and Pickering finally agreed to submit the case to the Attorney-General, and promised that if sufficient ground were found for a libel suit the matter would be laid before the

grand jury of the United States court for Pennsylvania. Yrujo was also able to incite action by Pennsylvania state authority. Proceedings against Cobbett were instituted in the supreme court of Pennsylvania, and in these proceedings a prominent part was taken by Chief Justice McKean, with whose family Yrujo had an intimacy that resulted in direct connection by his marriage to McKean's daughter. Neither in the federal court nor in the state court would the grand jury bring in an indictment against Cobbett, but McKean bound him over to keep the peace, and as Cobbett still continued to publish offensive articles his recognizances were declared forfeited and actions for libel were brought against him. The trouble and expense became more than Cobbett could endure. He cleared out, and went back to England. McKean's behaviour in these proceedings raised some serious questions of judicial ethics, much discussed then and since.⁵

The controversy between Pickering and Yrujo ended in a demand for the Spaniard's recall, but before it was necessary for the Spanish Government to act upon it, Jefferson had been elected and an Administration more friendly to Yrujo invited him to stay.

Pickering was in the midst of his controversy with Yrujo when Monroe arrived in the United States from France, late in June, 1797. He at once opened a correspondence with the Secretary of State demanding to know the reasons for his recall. He admitted that the executive had the power of recall but held that its exercise was controlled by the principles of justice and that hence he was entitled to an explanation. Pickering in a tardy reply pointed

out that, with the exception of the judiciary, the tenure of all government offices was at the will of the President. Monroe vehemently contended that this did not mean that the President was not accountable for his acts. An idea had got abroad that Monroe's own behaviour was to blame for the complications with France, and justice required that so injurious an impression should be removed, and that he should be restored to the "blessings of an honest fame." He demanded room in the State Department and the aid of a clerk to make up his case for vindication. Pickering made a soothing reply, pointing out that the granting of such a request might create an improper, inconvenient, unwise precedent. And it should be considered that removal did not always imply misconduct. Want of confidence, bad judgment, lack of diligence and skill, mistaken zeal, was each a sufficient cause. Monroe could not be pacified. He published a long statement, about which much ado was made in the party contention of the times. Mud was thrown on both sides and both Monroe and Pickering were thickly spattered. Monroe's journalistic partisans described Pickering as "Grand Vizir Timothy," who took his principles of official conduct from Turkey. Among the papers left by Washington was a copy of Monroe's statement, with the General's comments thereon.

No account of their experiences was received from the envoys to France, until March 4, 1798. So slow were communications with Europe at that period that the latest dispatch then received bore date so long before as January 8. On March 19, Adams informed Congress that while the envoys had been making every possible exertion he could "perceive no ground of expectation that

the objects of their mission can be accomplished on terms compatible with the safety, the honour, or the essential interests of the nation." He made an urgent recommendation that the Government should be supplied with means of protecting American commerce and defending our coasts from attack; and he advised that American vessels should no longer be restrained from arming to defend themselves.

As dispatches arrived telling of the proceedings and humiliations of the envoys, Adams laid them before Congress. They became famous as the X Y Z dispatches, from the fact that Pickering substituted those letters for the names of the persons who had approached the envoys with money demands. The story of the envoys came before Congress in seven instalments, at intervals from May 5, 1798, to January 18, 1799. Meanwhile President Adams kept the affair in his own hands, and such comment as he thought expedient he made himself. Not until the story was all in did Pickering get an opportunity to present his views. He then prepared a report "on the transactions relating to the United States and France" which, after considerable editing, Adams laid before Congress. Pickering observed:

"The points chiefly inviting attention are the attempts of the French government:

1. To exculpate itself from the charge of corruption, as having demanded a *douceur* of fifty thousand pounds sterling (222,000 dollars) for the pockets of the directors and ministers . . .
2. To detach Mr. Gerry from his colleagues, and to inveigle him into a separate negotiation; and

3. Its design, if the negotiation failed, and a war should take place between the United States and France, to throw the blame of the rupture on the United States."

The evidence was then presented in support of this indictment, accompanied by severe characterizations and much use of italics to enhance the emphasis. The report did not go so far as Pickering would have liked in censure of Gerry's behaviour. He put into the draft:

"It is further unfortunate that Mr. Gerry should have imagined it to be his duty to remain in France near three months after the instructions reached him, busied in informal negotiations, hopeless in their nature, and unwarranted by those instructions; in which, too, he was pointedly told 'that *suspense* was ruinous to the essential interests of his country.'"

Adams objected to this and some other passages, remarking: "I am not going to send to Congress a philippic against Mr. Gerry." Even after the President's revision, the report contains matter which seems out of place in a state paper. In conclusion it charged that all along the true object of the French Government had been merely to find pretexts for depredations. Pickering declared:

"In this way it determined to *fleece* us. In this way it gratified its *avarice and revenge* — and it hoped also to satiate its *ambition*. After a long series of insults unresented, and a patient endurance of injuries, aggravated in their nature and unexampled in their extent, that government expected our final submission to its will. Our resistance has excited its surprise; and

has certainly increased its resentment. With some soothing expressions is heard the voice of wounded pride. Warmly professing its desire of reconciliation, it gives no evidence of its sincerity; but proofs in abundance demonstrate that it is not sincere. From standing erect, and in that commanding attitude requiring implicit obedience—cowering, it renounces some of its unfounded demands. But I hope we shall remember ‘that the tiger crouches before he leaps upon his prey.’”

Certainly this reads more like a campaign document than a diplomatic report. It was published for distribution as a political pamphlet, and Pickering sent copies to his personal friends, one of whom, John Jay, ventured to observe that it contained expressions “rather too caustic for a state paper.” Pickering was so well pleased with his performance that he sent to General Washington not only the report as printed but also the passages which Adams had excised.

Although Pickering was not allowed to censure Gerry publicly he attacked him bitterly in the extensive correspondence in which he was continually engaged. In one of his letters at this period he said that Gerry had behaved with “disgraceful pusillanimity, weakness, duplicity and I think treachery.”

Meanwhile Pickering had taken steps to make all unauthorized negotiation with a foreign government punishable by fine and imprisonment. At his suggestion Congress passed a law, approved January 30, 1799, which was commonly known as “The Logan Act.” Dr. George Logan, a Philadelphian Quaker, made a journey to France

in 1798, ostensibly to pursue certain scientific investigations, but his main purpose seems to have been to act as a good influence. He had numerous interviews with Talleyrand and the Directory and was acclaimed by the French newspapers as "a messenger of peace". The only practical result of his activities was to bolster up the position of the French Government, which was that the good people of America were on its side, and that the only obstacle to friendly relations between the two countries was the behaviour of the Federalist Administration. Pickering's resentment of Logan's behaviour was intense, and the statute which gave expression to his feelings made punishable any citizen of the United States who entered into any sort of negotiation, "with an intent to influence the measures or conduct of any foreign government, or any officer or agent thereof, in relation to any disputes or controversies with the United States." The Logan Act made political capital for Logan. He was elected to the United States Senate by the Pennsylvania legislature in 1801.

Congress now passed a series of enactments of the kind that Pickering had long desired. The Navy Department was created, the raising of an army of 10,000 regulars was authorized, and in addition the President was authorized to accept the services of such companies of volunteers as should offer themselves fully armed and equipped. On July 2, 1798, Washington was nominated to the Senate as "Lieutenant General and Commander-in-Chief of all the armies raised or to be raised in the United States," and on the next day the appointment was unanimously confirmed. No declaration of war was made, but on May 28, 1798, American cruisers were

authorized to capture any French vessel found near the coast preying upon American commerce, and on July 7, 1798, the treaties with France were declared abrogated. The naval construction incited by the piracy of the Barbary powers, was now so well advanced that when hostilities began the American navy had in all twenty-two ships mounting 456 guns and carrying 3,484 men. The exploits of this little navy form a brilliant chapter of our history, which gave intense satisfaction to Pickering, for he had presided over the early stages of the work of preparation. A circumstance which doubtless had much to do with the splendid showing made, was the special type adopted in the construction of the six frigates which formed the principal force of the navy. Joshua Humphreys, Philadelphia Quaker, who for thirty years had been building ships, had advised that the vessels should be longer and broader of hull than any existing type, and yet not so high. This would allow for a sail spread that would make them especially fast and give room for nearly as many guns on one deck as ships of the old model could carry on two decks. This arrangement conferred superiorities which were displayed in every encounter.⁶ Under the protection it now received, and thanks to the wartime demands for neutral bottoms, American commerce expanded, and our exports increased from \$57,000,000 in 1797, to \$78,665,528 in 1799.

CHAPTER VII

TURNUED OUT OF OFFICE

IN histories of the period now under consideration it is usually remarked that Adams made a mistake in taking over the Cabinet just as Washington had left it. But the idea that the heads of the executive departments constituted the President's Cabinet, and that every member of it should be expected to give loyal support to his measures or else resign, did not take definite shape until a later period. The only clause of the constitution which treats of the relation of the President to the body now called his Cabinet, is that which gives him authority to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject, relating to the duties of their respective offices." This provision guided the behaviour of Washington and Adams. The aspect in which the heads of departments was regarded was not that of party associates and advisers of the President, but as bureaucratic officials, whom the President had a right to call upon for information. So long as they attended to their official duties with due diligence, they felt free to take their own line in politics. When Pickering took steps, as he did occasionally, to thwart Adams's purpose, he unquestionably acted under a sense of duty. The notion that such behaviour on the part of a member of the Cabinet was perfidious did not arise until developments had taken place which made the Cabinet a recognized institution, with political solidarity as its vital principle.

Adams was well aware of the difficulties which Washington had experienced in getting competent officials, and he had no desire to plunge into such troubles on his own account. In Washington's original Cabinet New England had only one representative—General Knox. The changes which had taken place had given to New England the State Department and Treasury portfolios, and that was pleasing to Adams. Before his inauguration he wrote: "Pickering and all his colleagues are as much attached to me as I desire. I have no jealousies in that quarter."

As time went on he began to feel strong jealousies in that quarter. Adams's behaviour in taking counsel with Jefferson as to foreign policy, before consulting any member of his Cabinet, inspired anxiety and alarm. Adams felt under no obligation to take the heads of the departments into his confidence, and he consulted them only when it suited his convenience to do so. From the first their attitude towards him was one of anxious supervision and guardianship. The father of Secretary Wolcott was a Federalist leader in Connecticut. He wrote to his son that Adams was "a man of great vanity, pretty capricious, of a very moderate share of prudence, and of far less real abilities than he believes himself to possess"; so that "it will require a deal of address to render him the service which it will be essential for him to receive." That exactly indicates the attitude which the members of the Cabinet took towards their nominal chief. They all seem to have thought that it was their duty to manage him and keep him out of mischief. Pickering, Wolcott and McHenry worked together along this line, but open antagonism first made its appearance

in the case of Pickering, who was incapable of dissimulation.

The President decided to nominate his son-in-law, Colonel William S. Smith, as Adjutant-General in the new army. Before the nomination was sent in, Pickering hastened to the Senate chamber and opposed the President's action with such effect that Senators waited upon Adams and advised him to withdraw the nomination. Adams refused, and then the Senate rejected it. Pickering made no concealment of his activity against Smith, remarking to some friends, "I have done only what I thought to be my duty, and am willing to abide the consequences." Adams was naturally offended, and in later years he expressed his belief that Pickering acted "at the instigation of Hamilton, as I suppose, who was jealous of Smith, as a favorite of Washington and a better officer than himself." This was a complete misunderstanding of the situation. Smith had involved himself in financial transactions which Pickering held to be discreditable, and he acted on his own responsibility. Hamilton had no connection whatever with this affair. His disposition towards Smith was quite friendly and when in December, 1800, Adams nominated Smith to be surveyor of the port of New York, Hamilton successfully exerted his influence in favour of confirmation by the Senate.

Another matter in which Pickering actively opposed the President's plans was in regard to the respective rank of the generals selected for the new army. Without any consultation with Washington as to his own wishes, Adams nominated him as Commander-in-Chief. Fearful that Washington might resent such uncere-
monious

treatment, Hamilton wrote to the General urging him to overlook the impropriety and give his consent. Washington did so, on condition that he should have the powers he deemed essential, including the right to select his major-generals. Adams gave vague assurances that the arrangements should be such as Washington desired, and he instructed Secretary McHenry to obtain Washington's advice. Washington then recommended as major-generals Hamilton, C. C. Pinckney and Knox, in that order of rank. Adams seemed to assent; the nominations were sent to the Senate and all were confirmed on the same day. It soon became known to the Cabinet that Adams was opposed to giving Hamilton the superior rank and was determined to prevent it. Without any notice to his Cabinet, Adams went off to his home at Quincy, Massachusetts, and planted himself in stubborn opposition to further action until his views were accepted. Adams wrote to McHenry that in any event he would have the last say, "and I shall then determine it exactly as I should now, Knox, Pinckney and Hamilton." Adams wrote to Washington that he had signed the commissions all on the same day in the hope that "an amicable adjustment or acquiescence might take place among the gentlemen themselves"; but, should this hope be disappointed, "and such controversies shall arise, they will, of course, be submitted to you as Commander-in-Chief."

This struggle for control went on from August 4 to October 13, 1798, Washington insisting on first rank for Hamilton, with the active support of Adams's Cabinet, and Adams holding out against it. Pickering took an active part in this controversy, writing frequently

to Washington to keep him informed as to the situation. Hamilton, who disliked being pitted against his old friend General Knox, wrote to Washington, saying that he did not want to be the occasion of any embarrassment, and adding, "I shall cheerfully place myself in your disposal, and facilitate any arrangement you may think for the general good." But nobody save Adams himself appeared to think that Knox,—at that time a stout, ruddy veteran, living on his country estate in Maine—was fit for such an important post. Washington was fond of Knox personally, and was most decided on that point. On the other hand, Washington, Pickering, Wolcott and McHenry all regarded Hamilton as being just the man for the place. But Adams was immovable. There was much anxious consultation over the situation, and Pickering took a leading part in the arrangement by which the dead-lock was broken. The plan adopted was this.

McHenry submitted to his colleagues all the correspondence in the case and asked their advice. Pickering, Wolcott and Stoddert (the Secretary of the Navy) made a joint reply declaring that "the only inference we can draw from the facts before us, is, that the President consents to the arrangement of rank as proposed by General Washington," and that therefore "the Secretary of War ought to transmit the commissions, and inform the Generals that in his opinion the rank is definitely settled according to the original agreement." Adams was now placed in such a position that he could not move without coming out in open opposition to Washington, and he did not venture to disturb the arrangement.

While this struggle was going on Pickering was active in his support of Federalist policy, including the Alien and Sedition Laws. An ordinary means of political opposition at this period was to hold a meeting at which an address to the President would be adopted. A document of this character was sent to Pickering with the request that it be laid before the President. In the form of a reply to this request, he issued on September 29, 1798, a public statement in which he defended the legislation which the address had assailed. Of the Sedition Act he said that it struck only at "pests of society and disturbers of order and tranquillity." He asked:

"What honest man can justly be alarmed at such a law, or can wish unlimited permission to be given for the publication of *malicious falsehoods* and with intentions the most base?"

Adams wrote to him about this statement that it was "concinnate and consummate," and that Mrs. Adams had said that "it is the best answer to an address that ever was written, and worth all that ever was written."

Pickering was active in his opposition to the steps taken by Adams to re-open negotiations with France, by sending another mission. Adams reached this decision without consulting his Cabinet, and he ceased having any relations with Pickering save of a formal character. This situation continued until after the New York election of April 28, 1800, in which Hamilton's ticket was defeated and the Federalists lost control of the legislature, by which presidential electors were to be chosen. As soon as definite news of the election results reached

Adams he decided that the time had come when he could rid himself of those whom he regarded as "Hamilton's spies." He struck first at McHenry. On May 5 Adams personally demanded his resignation. In his account of the interview, McHenry related that Adams reproached him with having "biassed General Washington to place Hamilton in his list of major-generals before Knox." Adams, well aware of the fact that he was a troublesome person to deal with in an interview, did not approach Pickering in person, but under date of May 10, wrote to him saying:

"As I perceive a necessity of introducing a change in the administration of the office of State, I think it proper to make this communication of it to the present Secretary of State, that he may have an opportunity of resigning if he chooses."

In his reply two days later Pickering said: "Several matters of importance in which my agency will be useful, will require my diligent attention until about the end of the present quarter." He went on to say that he had expected to stay on until March 4, when, if Jefferson were elected, he would of course go out, and that he had been economizing in his family arrangements with a view to that event. He concluded by saying: "After deliberately reflecting on the overture you have been pleased to make to me, I do not feel it my duty to resign."

Adams immediately replied: "Divers causes and considerations essential to the administration of the government, in my judgment requiring a change in the

department of State, you are hereby discharged from any further service as Secretary of State."

Notwithstanding this peremptory order, Pickering continued to work at office business the rest of the day, but in the evening he left the State Department never to return.

The antagonism between Adams and Pickering continued unabated the rest of their long lives. Adams lived for over twenty-five years after he retired from the Presidency, but he was never again in public office, except in 1820 when he was chosen a delegate to a convention called to revise the Massachusetts state constitution. Meanwhile Pickering was prominent in public life. After his dismissal he settled in Pennsylvania as a farmer, but was unsuccessful. His friends raised a fund for him by subscription, which was sufficient to pay his debts and provide him with some means. He returned to Massachusetts in 1802, and after an unsuccessful candidacy for election to the Eighth Congress, he was elected to serve his state in the United States Senate, of which body he was a member from October 17, 1803 to March 3, 1811. In 1812 he was elected to Congress from his district, and again in 1814. He might have been again elected had he not declined a nomination. During 1817 he was a member of the executive council of Massachusetts. He died January 4, 1829, in his eighty-fourth year.

In his career in Congress Pickering's antagonism to the policy of Jefferson and Madison was so intense that he supported movements to dissolve the Union in order to rescue New England from the domination of policies which he regarded as hostile to its interests.

Both Adams and Pickering were great letter writers,

and they each put on record their opinions of the other. In letters to a cousin, William Cunningham, between 1803 and 1812, Adams reviewed his relations with Pickering, of whom he said: "Under the simple appearance of a bald head and straight hair, and under professions of profound republicanism, he conceals an ardent ambition, envious of every superior and impatient of obscurity." Adams also declared: "His removal was one of the most deliberate, virtuous and disinterested actions of my life." And he remarked: "In consequence of Mr. Pickering's removal, I was enabled to negotiate and complete a peace with France, and an amicable settlement with England."

This Cunningham correspondence got into print, and Pickering made a vigorous reply to it. He pointed out that Adams's envoys sailed for France six months before he was removed from office, so that, "my being in or out of office was a matter of perfect indifference in the negotiations and in their result." As to the pacific settlement effected by Adams, Pickering observed:

"Instead of 'making peace on his own terms' he received the law from France. He even gave up the trophies of our victories, stipulating to restore to France her national vessels captured by ours. He *purchased peace* at the expense of twenty millions of dollars (for that was the estimated amount of French spoliations) relinquished to France without any equivalent. . . . The French government would not consent to give any indemnities to the American merchants for these spoliations of their property, unless the United States would revive and restore the treaty of alliance, with

its burthensome guarantees. To get rid of this the claims of the merchants were abandoned.”

There is much point in this criticism.

Adams had remarked upon the untamable aversions and indecorous style of expression, which made Pickering an unfit medium for conducting diplomatic negotiations. In reply to this Pickering was able to point to the fact that Adams had retained him in office for three years and two months.

Pickering never pretended that he was well equipped for diplomatic tasks. He seems always to have put a modest estimate on his own abilities. When Princeton conferred upon him the LL.D. degree, his letter of September 27, 1798, acknowledging the honour, said:

“I have ever considered academic honors as the appropriate reward of literary merit, to which I frankly tell you I have no pretensions, and had I been previously advised of the intention of the board, I should certainly have requested them to reserve the honor for a more deserving object. My life has been one uninterrupted scene of business; and I have daily to regret the want of *literature*, which would facilitate the performance of my official duties.”

At the time he was removed from office, replying to a letter of regret from the minister resident of Holland, he wrote:

“I confess that the manifestation of villainy whether public or private, has ever been wont to excite my

indignation, and I am not used to conceal what I feel. Hence a severity of expression which should seldom be admitted into diplomatic papers. This temper, now called acrimonious, is one of my ostensible sins; but I am certain that my removal is to be ascribed to *other* causes."

All this is very just and sensible, and when it is considered that this letter was written just three days after he was turned out of office, it displays much magnanimity, a quality of character further evinced by the fact that he said of his successor, John Marshall, that he would prove to be "a far abler, and doubtless a more prudent advocate" of national interest.

Examination of Pickering's state papers abundantly confirms his own opinion that he was a poor diplomatist. It is quite as evident, however, that he was absolutely fearless, perfectly honest, and that he was indefatigable in the performance of whatever he believed to be his duty; but he was too narrow in his views and too sectional in his aims to rank high as a statesman.

JOHN MARSHALL
SECRETARY OF STATE

MAY 13, 1800 TO FEBRUARY 4, 1801
(*ad interim*, FEBRUARY 4 TO MARCH 4, 1801)

BY

ANDREW J. MONTAGUE, LL.D.

REPRESENTATIVE IN CONGRESS FROM THE
THIRD VIRGINIA DISTRICT

JOHN MARSHALL

FROM THE PORTRAIT BY JARVIS. REPRODUCED BY
PERMISSION, FROM ALBERT J. BEVERIDGE'S

LIFE OF JOHN MARSHALL



John Marshall

JOHN MARSHALL

I

WASHINGTON'S entire Cabinet was retained by his successor, John Adams. Friction arose and waxed with the moving months. "I had all the officers [Cabinet] and half the crew always ready to throw me overboard!" declared Adams.¹ He waited until the spring of 1800 to turn upon his mutineers, when he forced the resignation of his Secretary of War on May 5, and on the same day tendered this office to John Marshall, who immediately declined it. May 10 Adams demanded the resignation of his Secretary of State, who refused, and May 12 he sent the following self-explanatory communication to the Senate: "I nominate the Honorable John Marshall, Esq., of Virginia, to be Secretary of State, in place of the Honorable Timothy Pickering, Esq., removed," which nomination was confirmed the following day. The appointee did not enter upon the duties of office until June 6, 1800. He continued therein until the expiration of Adams's Administration on March 4, 1801, thus serving nine months less two days.² Between the dates of Marshall's confirmation and his assumption of office, Charles Lee, Attorney-General, acted as *ad interim* Secretary of State.

John Marshall had but shortly passed the middle of his long life when he became Secretary of State. He was born in Fauquier County, Virginia, on September 24,

1755.³ His education was limited, though ampler than that of Washington and other eminent men of the time. He never sought office, he had declined several high places, but he had performed with distinction military and civil duties. He was as well known perhaps at the time of his appointment as any man of the Federalist party, Adams, Hamilton, Jay and Pinckney excepted, men whom he exceeded as a seeker after truth and justice, in wisdom and fairness and in poise and prudence.

He was no meteor, but rather a steady and expanding light. His capacity to discern and assess the determining facts in controversies; his personal detachment in observation and conclusion; his tact and courage in applying justice; his peculiar knowledge of the institutions and functions of the new Republic; his pride in its sovereign equality and independence, and his knowledge of international law in relation thereto; his diplomatic experience in France in the celebrated X, Y, and Z affair; his unaffected and natural power of command; his simple, sincere, and determined character; and his kindly and engaging personality, eminently fitted him for the high station which he was reluctant to accept.⁴ Few doubted his fitness for the position, though Wolcott feared he would "find himself out of his proper element."⁵ On the contrary, his predecessor, Pickering, and the bulk of the non-partisan public saw in him an ideal selection.⁶

Some instances may be recalled that attest his qualifications for this high office. He quickly rose from the ranks to a captaincy in the Revolutionary army, where his sense of justice, tactful co-operation and leadership at once commanded recognition of officers and men.

In the agonies of Valley Forge these officers and men paid him the unprecedented tribute of constituting him an unofficial judge or arbiter to whom they submitted their disputes, which he decided with a sense of official responsibility, in some instances delivering his opinions in writing upon the questions submitted, thus early disclosing a personal detachment and moral courage in dealing with difficult and delicate situations.

He took his seat in 1782 in the General Assembly of Virginia with Patrick Henry, Thomas Jefferson, Richard Henry Lee, and, in a subsequent session, with George Mason, James Madison, and others of great distinction. Little consideration can be given to these legislative activities. We mention his speech upon the construction of Jay's Treaty and its applicability to certain pending legislation, involving state and federal powers as well as the law of nations, a speech that carried his reputation for ability, character, and learning far beyond the limits of Virginia.

Another contribution is found in the debate in the United States House of Representatives upon the requisition which Adams had honoured for Jonathan Robbins, a British subject, impressed by the British Government on the charge of piracy and murder committed on the high seas upon a British frigate. The subject evoked a most passionate and partisan controversy. Marshall contended that the crime and the criminal came fully within the rendition clause of Jay's Treaty; that the question was not parliamentary or juridical, but wholly executive, and therefore the President's action was beyond Congressional review. This speech is conceded to be one of the most notable and effective in Congress-

sional annals, and is referred to as accentuating Marshall's aptitude for international questions.⁷

Doubtless Marshall's labours as one of the three envoys appointed by Adams in June, 1797, to adjust the acute and complex controversy existing between France and America, is the best evidence of his fitness for the State Department. Undoubtedly Adams so thought. In writing to Gerry he said, "He [Marshall] is a plain man, very sensible, cautious, guarded, and learned in the law of nations." In this famous episode he was more than that—he was a great diplomat. The "X, Y, Z" affair has already been noted in the previous sketch in this volume. The negotiations involved not only the existing treaties between France and America, but a congeries of allied questions, such as seizure, prize, contraband, neutrality, and indemnities, the merits and proportions of which were obscured by the passions arising out of the war between England and France, and the intrigues of Talleyrand. Marshall at once became the master mind of the commission, surpassing even the noble and accomplished Pinckney. He immediately penetrated Talleyrand's subtle intrigue, and speedily unmasked his diplomatic but unofficial and disavowed marionettes, known as X, Y, and Z. He demonstrated the independence, equality, and dignity of the new republic, which he supported in a memorial, written by himself, and justly ranking among the great state papers of the nation. His contributions, though unavailing at the time to the solution of this delicate controversy, must have had decisive weight in determining his selection by Adams for the State Department.

It should not be overlooked that Adams was not

alone in his appreciation of Marshall, for Washington had tendered him the office of Attorney-General and later the post at Paris as the successor of Monroe, both of which were declined.⁸

In the summer of 1800, shortly after the removal of the Federal Government from Philadelphia to Washington and its humid and malarial climate, Marshall entered upon the duties of his new office, with that patient and modest self-confidence so characteristic of him. Conditions generally were unfavourable. Adams had gone to his home in Quincy, Massachusetts, leaving Marshall to bear a heavier share of the general work of the Administration, much of which had to be conducted by correspondence dependent upon a slow and undeveloped post. The Cabinet was new and un-coördinated in the expiring year of Adams's term. The political skies were lowering, factional and partisan rancor most violent. The Federalist party was dissolving from the fervent heat of internal dissensions. Hamilton, its genius and leader, at first in stealthy opposition, was now in open rebellion against the President. A new and powerful opposition party had come forth under the masterful leadership of Thomas Jefferson. The whole situation was truly deterrent to an efficient administration of foreign affairs.

II

Complicated and portentous foreign questions at once confronted the new Secretary.

France and England were continuing sources of anxiety, with Spain quite ominous in the offing. The second commission to France, known as the Ellsworth Com-

mission, was appointed by Adams shortly before Marshall assumed the State portfolio, and it was labouring in dubious and anxious negotiation, resulting in partisan impression and effect upon the approaching presidential election. The appointment of the commission had been bitterly assailed by those opposed to Adams, including Hamilton and other eminent Federalists. The calm and just mind of Marshall approved this action of Adams, which was and is among the most important and far-reaching decisions found in American diplomacy. Obviously further efforts for a settlement ought to have been attempted or war would have resulted. Failure to have made the attempt would not have withstood the calm judgment of history. The "memorial" of the former commission, written by Marshall, must have strengthened the purpose of Adams to renew the negotiations, especially since conditions were now more propitious.⁹ Talleyrand, sensing war in the distance, had changed his mind, and had given assurance that the French Government would "receive the envoys of the United States in the official character with which they are invested; that they shall enjoy all the prerogatives which attach to it by the law of nations, and that one or more ministers shall be duly authorized to treat with them,"¹⁰—an express compliance with the conditions submitted by Adams. The situation itself had changed. "The task of the first ministers had been to settle a difficulty; the object of the present was to negotiate a treaty, in every respect a more arduous undertaking,"¹¹—and none the less difficult. The immediate designs of Talleyrand were to detach as far as possible the United States from England, and to temporize with

the former until France could secure the retrocession of Louisiana by Spain, which was accomplished by the Treaty of San Ildefonso on October 1, 1800.

Meanwhile the truths and arguments of the "great memorial" were not only arousing the spirit of the people of America and strengthening the clear purpose of Adams, but were shaking the doors of the French chancellery itself. America was young and weak, but it was healthy and sovereign, free and equal, and Marshall's patriotism and ambition was to hold it in this high rôle among the nations of the earth, demanding and exercising its sovereign right of neutrality between warring France and England. This was Marshall's position as an envoy in 1797; this was his position as Secretary of State in 1800.

As he watched the progress of the negotiations of the second commission, their slow communication of news quickened his anxiety. From the commission and other sources he had received dribblets of information which had been long in reaching him and which gave no great encouragement. On August 25, 1800, he wrote Adams: "We ought not to be surprised, if we see our envoys in the course of the next month, without a treaty. This produces a critical state of things, which ought to be contemplated in time." In acknowledging this letter Adams inquired "whether the President ought not at the opening of the session to recommend to Congress an immediate and general declaration of war against the French Republic." "Congress has already," said he, "in my judgment, as well as in the opinion of the judges at Philadelphia, declared war within the meaning of the Constitution against that [French] republic, under certain restrictions and limitations. If war in any degree

is to be continued, it is a serious question whether it will not be better to take off all the restrictions and limitations." "It will be," he continued, "our destiny, for what I know, Republicans as we are, to fight the French republic alone. I cannot account for the long delay of our envoys. We cannot depart from our honor, violate our faith, to please the heroic consul."¹²

Marshall, however, urged patience, and expressed his expectation of an adjustment. "I am greatly disposed to think," said he to the President, "that the present [French] government is much inclined to correct, at least in part, the follies of the past. Of these, none were perhaps more conspicuous or more injurious to the French nation, than their haughty and hostile conduct to neutrals. Considerable retrograde steps in this respect have already been taken, and I expect the same course will be continued." If so, "there will exist no cause for war, but to obtain compensation for past injuries"; and this, Marshall was persuaded, was not a sufficient justification for war.¹³

The commission endeavoured to expedite the negotiations; but Bonaparte could not be in France and Italy at the same time. His eyes for the moment were fixed on his sword then flaming at Marengo. Austria brought to her knees by that victory, the First Consul returned to Paris early in July, and on the tenth of that month the American commission was notified, "that the whole business of the treaty was now under the consideration of the Premier Consul, and that his decision and instructions were expected in the course of a few days." Receiving no decision, the commissioners again pressed for a conclusion of the negotiation; they received the

reply "that it was the decided opinion of the Premier Consul that the ancient treaties ought to be the basis of negotiation; that compensation could only be a consequence of the existence of the treaties, and the re-establishment under them of former privileges and relations; and that he would never consent to make a treaty which would surrender the exclusive rights of France, in effect, in favor of an enemy; or would in any event, make a treaty with the United States, which would not place France on a footing of equality at least with Great Britain."¹⁴

French privateers had for a long time harried American commerce. American hostile sentiment was swelling in volume and intensity against France. Indemnities had been demanded. An army had been re-created under Washington's command. A new navy had taken the seas and engaged in heroic actions. Congress had declared on July 9, 1798, that the French treaties of 1778 were void. Bonaparte now turned his mind to the United States and at once put his finger upon the weak link in the chain of negotiation. He argued with compelling force that the treaties either did, or did not, exist; that if they did exist, the negotiation must confine itself to their infractions and consequent indemnities; or if the treaties did not exist, as declared by Congress, then such an abrogation was an act of war, and the discussion must of necessity rigorously relate itself to the negotiation of a new peace treaty as a condition precedent to the resumption of friendly relations. In brief, the inexorable dilemma was either the old treaties with indemnities or a new treaty without indemnities.

The First Consul cleverly accepted America's declaration that the treaties were void by reason of the act of Congress. He then logically argued that claims for indemnities could not be based on violation of a treaty which no longer existed — they could not grow out of a vacuum. Faced by the dilemma, the commissioners advised their Government that they had either to abandon the negotiation or violate their instructions, and the latter they proceeded to do.

After several conversations the envoys reported that they had effected "a temporary arrangement, which would extricate the United States from war, or that peculiar state of hostility in which they were at present involved; save the immense amount of property of our citizens depending before the council of prizes; and secure, as far as possible, our commerce against the abuses of capture during the present war" between England and France. The "arrangement" really did more: by it France abandoned her demand for a *rôle d'équipage* [list of the crew], with its unnecessary and exasperating exactions; she secured the most-favoured-nation status of asylum for her privateers, but at the same time she gave a more meticulous recognition to America's right of neutrality; a renewal of the declaration of "free ships, free goods"; and a postponement of the subject of indemnities mutually due and claimed for future negotiation, suspending in the meantime the operation of treaties affecting this question and substituting temporary regulations in lieu thereof.

Upon receiving in July, 1800, the dispatch of the commission of May 17, Marshall wrote Adams that he was "much inclined to think that the French government may

be inclined to protract it [the negotiation] in the expectation that events in America may place them on higher ground than that which they now occupy,"¹⁵—an early instance of the baleful effects of the association of foreign negotiations and policies with domestic partisan politics.

The convention reached Washington October 4, 1800. Marshall advised its ratification, though he wrote Hamilton that he was "far, very far, from approving" it, doubtless meaning that if conditions were different he would not advise its submission to the Senate. But what competent Secretary of State would have done otherwise than urge ratification? Marshall knew that its rejection must inevitably bring war, and he believed that war should be avoided at any honourable sacrifice.¹⁶ Had war occurred at this time the United States would have stood alone face to face with Bonaparte's legions and fleets and his ambitious plans for resurrecting a world empire. Though Marshall could not have known it, the First Consul had negotiated on the day after the Convention of 1800 with the United States a secret treaty with Spain for the retrocession of Louisiana; and eighteen months later, on March 25, 1802, the Peace of Amiens was concluded with Great Britain. It is well that the United States did not quibble with Bonaparte on what was in reality a reasonable compromise.

Adams sent the convention to the Senate on December 15, 1800, together with three manuscript volumes containing the journal of the envoys. On February 3, 1801, the Senate advised and consented to its ratification, with a proviso that its second article be expunged, and that the convention should become operative for a term of eight years from the exchange of ratifications. Adams

then informed the Senate, presumably upon Marshall's advice and apparently in his own language, that "it would have been more conformable to my [Adams's] own judgment and inclination to have agreed to that instrument unconditionally," but he considered it "more consistent with the honor and interest of the United States to ratify it under the conditions prescribed than not at all." Thus ended the treaties of 1778, our first and last entangling alliance.

Adams then nominated Bayard to "proceed without delay to Paris, to negotiate the exchange of ratifications," but inasmuch "as that gentleman has declined his appointment, for reasons equally applicable to every other person suitable for the service, I shall take no further measures relative to this business, and leave the convention, with all the documents, in the office of State, that my successor may proceed with them according to his wisdom."

Here ended Marshall's connection with this difficult and vexatious subject, which subsequently came under the pruning hand of Bonaparte in the form of a qualification of the reservation of the Senate, and later [1803] found its culmination in the Louisiana Purchase, without which cession it seems inevitable that the United States would have sided with Great Britain in its war against France. Then there would have been no disputes about neutrality or impressment, no War of 1812, in all probability no Civil War, because there would have been no western territories to serve for the culture of the slavery question. Marshall's treatment of this whole subject made a substantial contribution to the law of nations, and commanded a fuller appreciation by France

and Europe of the law of neutrality and of America's dignity, independence, and equality among nations.

III

After this reconciliation with France our relations with Great Britain assumed an ominous aspect, with possible war as the result of the accumulating controversies and frictions growing out of Jay's Treaty, which had aroused France's suspicion and disapproval just as the Ellsworth convention had awakened the suspicion and antagonism of Great Britain. America had declared neutrality as between the two warring nations, a position at once delicate and difficult. Pitt had declared it "a principle that the distance between friends and neutrals is immense; it is small, on the contrary, between enemies and neutrals; the slightest accident, a mere chance, the least mistrust, a false appearance, is enough to efface the distinction between them."¹⁷ Under such tension and cloud England and America undertook to adjust these controversies, England with one eye upon the United States and the other upon France, her enemy.

Marshall had a formidable task. Partisan rancour had long decried him as pro-British and anti-French. Both charges were unfounded. His policy was a straight line of neutrality, which he followed with undeviating step. His Government was a free, equal and independent nation, and, in respect to its foreign relations and powers, a compact and unified sovereignty, and the sooner this was recognized the better for the disposition of the business in hand. Marshall would deal with France and England separately. America's treaty with France he held

to be none of England's business, and America's negotiation with England, none of France's concern. America in law and in fact was adapted and competent to conduct her own business, which she would do in a spirit of right and justice to all nations, denying the right of any nation to use her as a pawn to redress its wrongs or a weight to balance its rights. She desired friendship with all nations and domination from none.

In this spirit and upon these principles Marshall approached a settlement of the controversies arising under Jay's Treaty, a treaty better than none in that it brought America a few compensations and postponed war some fifteen years, in which time the nation grew in coördinated strength and cohesive power.

The United States in the early years of its diplomacy had little experience and no precedents of its own as a guide through the tangle of debts and indemnities, commercial restrictions, seizures, impressments, blockades, and the rights of privateers in the ports of neutral nations. No Wharton nor Moore for immediate reference and consultation; only Grotius, Wolf, Puffendorf, Vattel and a few known and existing treaties. In so complicated a situation common sense, robust spirit of right and justice, judicial detachment from environment, patient investigation, and courageous application of justice to incident, of right to fact, must alone disclose the solution and principle of conduct. In this field and with these weapons Marshall was a commanding figure.

Article VI of the Jay Treaty provided a mixed commission for the adjudication of claims of British creditors against American debtors, the right of the collection of which claims being assured by Article IV of the Treaty

of Peace of 1783.¹⁸ The commission to sit at Philadelphia was composed of five members, two to be appointed by each Government, "and the fifth by the unanimous voice of the other four," and failing to agree, then by lot. The result of this device was the choice of a British subject as umpire. The commission had no sooner organized in pursuance of this article, than the British majority proceeded in violation of jurisdiction and evidence to decide quite invariably in favour of British claimants. The American commissioners refused further to participate in the proceedings, thereby ending the arbitration at Philadelphia. Meanwhile a similar commission had been sitting at London under Article VII of the Jay Treaty for the purpose of adjudicating American Spoliation claims arising "under colour" of the British Orders-in-Council of 1793, and constituted by lot with an American citizen as the fifth member and umpire. When the British majority broke up the Philadelphia commission, the American majority, under instructions, withdrew from the London spoliation commission.¹⁹

Marshall inherited from his predecessor this sensitive and perplexing subject. Pickering had protested to Rufus King as late as February, 1800, against the injustice of the procedure and the inexcusable imputations cast upon the American commissioners. The British, however, were determined to have their way, but wished to conceal their arbitrary conduct by placing the blame upon the American members of the commission.

On August 23, 1800, Marshall wrote his letter of instruction to Rufus King, the American minister at London. He first reaffirmed the American suggestion that this vexatious item of the treaty should be relieved of all

ambiguity by the adoption of "an amicable explanation" of the article in question, whereby the jurisdiction of the commission should be more clearly and definitively stated, and expressed much regret that the British Cabinet was "indisposed to enter on the discussion of this interesting subject." He also "perceived with a concern, not entirely unmingled with other sensations, that the secession of two commissioners from the Board lately sitting in Philadelphia, has been attributed, not to its real cause, but to motives which in no instance have ever influenced the American Government." He averred that his Government was, "as it has ever been, sincerely desirous of executing, with perfect and scrupulous good faith, all of its engagements with foreign nations," but actions of the commission could never be accepted which were "considered, not as constructive of an existing treaty, but as imposing new and injurious burthens, unwarranted by compact, and to which, if in the first instance plainly and intelligibly stated, this Government could and never would have assented."²⁰

He then observed that Lord Grenville was wholly wrong in his assumption that the American commissioners withdrew from the Board "merely because awards were rendered against their judgment." It was not a question of the merits or justice of the awards, for the commissioners and their Government had "acquiesced under opinions which they conscientiously believed to be formed on erroneous principles, but on principles submitted by the treaty to their decision"; that is to say, the decisions themselves were wrong but legal in that the treaty authorized the Board to consider this class of cases. The vice in the argument of Grenville, however, was his

failure to distinguish between cases authorized to be considered and cases not within the scope of the authorization. It was a question of power conferred by the treaty, and in many cases no power or jurisdiction could be found in the treaty to support the submission. Moreover, Marshall's construction was that the words "all cases" could "only mean those cases which the two nations have submitted to reference," described in "the preceding part of the article, and this description is relied on by the United States as constituting a boundary, within which alone the powers of the commissioners can be exercised. This boundary has, in our judgment, been so totally prostrated, that scarcely a trace of it remains." Therefore, when "a majority of the Board had proceeded to establish a system of rules for the government of their future decisions, which, in the opinion of this Government, clearly comprehended a vast mass of cases never submitted to their consideration," it became "necessary to terminate proceedings believed to be totally unauthorized, and which were conducted in terms and in spirit only calculated to destroy all harmony between the two nations."²¹ In other words, America made no complaint of the judgment, however unrighteous; her contention was the absence of power to render the judgment. Had Lord Grenville ever heard of the principle of *ultra vires*? If so, he must have realized the impotency of his argument and contention.

In this instruction to King we see in Marshall not only a judge, a keen and unerring analyst, a masterful logician, but a wise and humane statesman, for he yearned for just and harmonious relations, for a real peace, between the two nations. This is more apparent when in

his subsequent instructions to King he urges that if no precedent explanation of the sixth article could be had, and rather than to run the risk of another board, he should submit as an alternative the payment of a lump sum in settlement of the whole subject. Marshall realized also the difficulties of this method of adjustment, difficulties only to be diminished by "reciprocal sacrifices of opinion," for otherwise disagreements would as likely result as to "the sum which ought to be received as on the merits of the claims for which it will be paid." Already British creditors had filed the most extravagant claims, and among them "cases believed to be so notoriously unfounded, that no commissioners, retaining the slightest degree of self-respect, can establish them. There are many others where the debtors are as competent to pay as any inhabitant of the United States; and there are others where the debt has been fairly and voluntarily compromised by agreement between creditor and debtor," and there "are even cases where the money has been paid in specie, and receipts in full given." He did not mention these cases "as comprehending all the cases of claims filed, which can never be allowed; but as examples of the materials which compose that enormous mass of imagined debt, which may, by its unexamined bulk, obstruct a just and equitable settlement of the well-founded claims which really exist."

Marshall further asserted that the creditors are continuing their efforts, and that had they "not been seduced into the opinion that the trouble and expense inseparable from the pursuit of old debts might be avoided by one general resort to the United States, it is believed they would have been still more rapidly proceeding in

the collection of the very claims, so far as they are just, which have been filed with the commissioners. They meet with no obstructions, either of law or fact, which are not common to every description of creditors, in every country, unless the difficulty with respect to interest during the war may be so denominated. Our judges are even liberal in their construction of the fourth article of the treaty," and "have manifested no sort of partiality for the debtors."²² Out of abundant caution Marshall suggested to the American minister at London that if an explanatory provision of Article VI were rejected and a gross sum in lieu thereof adopted, then the amount should be closely watched, and that it should not in any event "exceed one million sterling."

Save a reference in a subsequent instruction Marshall was compelled to leave this question to his successor, but it may be added that Madison finally disposed of the subject in conformity to Marshall's instructions to King, which was a high attestation of the diplomacy of Marshall.

Within a month thereafter, September 20, 1800, Marshall wrote a second letter of instructions to King, a document ranking among the very greatest of American papers, and perhaps unequalled in the diplomatic contributions of the English-speaking world, even surpassing his famous "memorial" submitted by the three envoys some three years earlier to the Directory of France. While dealing with the subjects of contraband, blockade, capture and prize, impressment, and neutrality, he begins by referring again to the construction of Article VI of Jay's Treaty, the status of which he feared had impeded negotiations upon other momentous questions.

Should King be unable to obtain "explanatory articles," determining the true construction of Article VI, Marshall could "perceive no reason growing out of this misunderstanding which should obstruct the progress of an agreement on subjects the present practice on which so seriously threatens the peace of the two nations,"²³ and that whatever may be the fate of the sixth and seventh articles, both being similar, he hoped "the negotiations relative to contraband and impressments" should now go forward without interruption.

Marshall's logical mind naturally deplored the association of unconnected negotiations to the prejudice of fair and just consideration of pending negotiations. For example, the abrupt termination of the adjudications under the sixth article, and the recommencement of negotiations with France, while connected in point of time, were "entirely independent of each other." He would have King plainly understand "that the suspension of further proceedings on the claims of the British creditors against the United States is attributable exclusively to the wild, extensive, and unreasonable construction put by the commissioners of that nation on the article they were appointed to execute"—a construction which he thought "at once prostrated the words and spirit of the article, and even leaped all those bounds within which, by common consent, their powers were limited." He asserts that had the United States been at "open and declared war with France, without a prospect of speedy pacification, the same causes must have induced the same measure. The suspension, then, of the commission at Philadelphia was not influenced by the probability of negotiating with France, nor have these two measures any tendency to

explain each other." One was a measure of defense, the other, "a necessary consequence of a well digested political system which this Government adopted early in the present war, and has uniformly sought to maintain." He then boldly declared that the United States "do not hold themselves in any degree responsible to France or to Great Britain for their negotiations with the one or the other of these Powers; but they are ready to make amicable and reasonable explanations with either," and it is in this spirit that the American policies must be viewed, and, giving concrete instance, he declared that it had "been the object of the American Government, from the commencement of the present war to preserve between the belligerent powers [England and France] an exact neutrality. Separated far from Europe, we mean not to mingle in their quarrels. This determination was early declared, and has never been changed. In pursuance of it, we have avoided, and shall continue to avoid, any political connexions which might engage us further than is compatible with the neutrality we profess, and we have sought, by a conduct just and friendly to all, to be permitted to maintain a position which, without offence to any, we had a right to take." After this reference to entangling alliances he pungently observed that the "aggressions, sometimes of one and sometimes of another belligerent Power, have forced us to contemplate and prepare for war as a probable event. We have repelled, and we will continue to repel, injuries not doubtful in their nature, and hostilities not to be misunderstood. But this is a situation of necessity, not of choice. It is one in which we are placed not by our own acts, but by the acts of others, and which we [will]

change as soon as the conduct of others will permit us to change it.”²⁴

Marshall then struck a more familiar stride. He touched on subjects which he so powerfully illumined in after years from the judgment seat. England was playing havoc with American commerce. In her eyes almost all cargoes were contraband, regardless of character or port of destination. He held the position of England “to be as unjustifiable as it is unfriendly.” Her construction of the treaty must not be left to the whim or avarice of the offending nation, for “while the law of nations on this subject can only establish general principles, particular treaties supply this defect by defining precisely between the parties the relative rights of each as a belligerent or neutral Power.” The law of nations plainly declared that “articles exclusively used in war are contraband, and that all articles not used in war are the objects of lawful commerce. But articles of promiscuous use, proper for peace or war, may be it has been contended, contraband or not, according to circumstances,” and these “articles thus doubtful in themselves should be determined by those circumstances which may ascertain the use to which they are to be applied.” He then triumphantly argued that “if the circumstance, and the cargo and its destination, show unequivocally that its application must be to military purposes, materials fit for both peace and war may assume the character of contraband; but if those circumstances afford a solid ground for the opinion that the suspected materials are designed only for the ordinary purposes of the nation, then there can be no just motive for interrupting a commerce which ought to be pronounced lawful.” This principle plainly fixed “the-

boundaries of the conflicting rights of neutral and belligerent Powers. For neutrals have a right to carry on their usual commerce, and belligerents have a right to prevent them from supplying the enemy with instruments of war." But the difficulty consisted in the application of the principle, for "two nations judge differently on the circumstances attending each case; and to prevent the quarrels which may grow out of this difference of judgment, a precise list of contraband is usually agreed on between them. If, however, there be in the enumeration an ambiguous expression, it ought to be expounded with reference to those general principles intended to have been rendered definite by the particular agreement, and the inquiry ought always to be made, whether the article was really designed for the prohibited object or was transported for the ordinary purposes of commerce. In the catalogue of contraband agreed on between the United States and Great Britain, there is one description which leaves to construction what specific articles it may comprehend, namely, 'and generally whatever may serve *directly* to the equipment of vessels.' In construing this expression, the British courts of Admiralty appear to consider it as including whatever might by any possibility be applied to the equipment of vessels. Although the article be in itself unfit and improper for that use, and therefore be not in common so applied, yet if it might by any possibility, for want of other proper materials, admit of such application, the [English] courts adjudge, although such other materials be not wanting at the port of destination, that it is contraband of war." This construction he deems "alike unfriendly and unjust." Moreover under the British construction, the word

"*directly*" is without effect. "Expunge it from the sentence, and . . . the sense will remain the same. But plain reason, and the soundest and most universally admitted rules of construction forbid us to interpret by garbling a compact." This word had no meaning "unless it be admitted to limit the description to materials which in their ordinary and common application are in considerable quantities proper for and 'serve *directly* to the equipment of vessels.' To exclude it, or to construe it as if it was excluded, is to substitute another agreement for that of the parties." Obviously this construction ought to be refused, "because it would swell the list of contraband to an extent which the laws and usages of nations do not authorize: it would prohibit, as being for the equipment of vessels, articles plainly not destined for that purpose, but fitted and necessary for the ordinary occupations of men in peace; and it would consequently presuppose a surrender, on the part of the United States, of rights in themselves unquestionable, and the exercise of which is essential to themselves and not injurious to Britain in the prosecution of the war in which she is engaged. A construction so absurd and so odious ought to be rejected."

Moreover, said Marshall, articles of contraband are not subject to confiscation under the treaty unless "they are attempted to be carried to an enemy," and therefore upon what right could such cargoes be confiscated when destined for New Orleans and "for the consumption" of the citizens residing in the Mississippi Valley?²⁵ The instructions abound in other passages of like cogency, but the excerpts quoted are given as illustrative of his power of argument and the irrefutability of his construction.

American commerce suffered from the abuse not only of the law of contraband but also of blockade. Marshall made vigorous representations respecting the injuries resulting from the exercise of the latter. He urged that a lawful blockade required the port to be invested by land as well as by sea, but for the time he would waive the right of the former and direct his complaint against imperfect and illegal investments by sea, insisting, however, that an actual blockade was at least the sole right of the belligerent. He complained "that ports not effectually blockaded by a force capable of completely investing them, have been declared in a state of blockade, and vessels attempting to enter therein have been seized, and on that account confiscated." Declaratory blockades gave undue power to the declarant and worked wrong and injury to the neutral. The "capacity to blockade" should "be limited by the naval force of the belligerent" and that it is of "the last importance to neutrals that this principle be maintained unimpaired." Nor could ports be temporarily abandoned and a portion of the investing fleet applied to other objects without losing the rights of blockade. Even during the temporary absence of the fleet "the commerce to the neutrals to the place should be free."

The disposition of the ships and cargoes captured for alleged violations of the law of contraband and blockade by the British navy aroused his most caustic animadversion. He first adverted to human frailties, by observing it "is not to be expected that all commanders of national ships, much less the commanders of privateers, should be men of correct conduct and habits. The temptation a rich neutral commerce offers to unprincipled

avarice, at all times powerful, becomes irresistible, unless strong and efficient restraints be imposed by the Government which employs it. It is the duty of the Government to impose such restraints," and its "failure to impose them exposes the belligerent Government to the just reproach of causing the injuries it tolerates." But the "most effectual restraint is an upright judiciary, which will decide impartially between the parties, and uniformly condemn the captor in costs and damages where the seizure has been made without probable cause." "It is only by infusing a spirit of justice and respect for law into the courts of Vice-Admiralty, that these excessive and irritating vexations can be restrained." These courts, "whatever may be the case, seldom acquit, and when they do, costs and damages for detention are never awarded." England should discontinue and punish "those who tarnish alike the seat of justice and the honor of their country, by converting themselves from judges into mere instruments of plunder." This language rings with the wrath of his malediction against an "ignorant, corrupt and dependent judiciary" uttered in the Virginia Convention of 1829, and exhibits the qualifications that were soon to find expression upon an august and congenial stage.

The instructions conclude with an arraignment of impressments on the part of England, an old and vicious practice of that nation which had frequently received vigorous protests from America. He declared that Britain had asserted no right "to impress the natives of America. Yet they are impressed, they are dragged on board of British ships of war with the evidence of citizenship in their hands, and forced by violence there to serve until

conclusive testimonials of their birth can be obtained. These must generally be sought for on this side of the Atlantic. . . . It is the duty as well as the right of a friendly nation to require that measures be taken by the British Government to prevent the continued repetition of such violence by its agents. . . . It is impossible not to believe that the decisive interference of the Government in this respect would prevent a practice, the continuance of which must inevitably produce discord between two nations which ought to be the friends of each other." He asks, is "it not more advisable to desist from, and to take effectual measures to prevent an acknowledged wrong, than by perseverance in that wrong to excite against themselves the well founded resentment of America, and force our Government into measures which may possibly terminate in an open rupture?"²⁶ An ominous inquiry this that tragically finds its answer some twelve years later in fire and sword! How persistently and stupidly did England blunder in her dealings with the Colonies and the new Republic!

This paper evidences Marshall's temperament and ability for the highest order of statecraft, and is rather copiously quoted in order that his own words may best exhibit his genius and conduct. Two conclusions obviously appear,—one, that Marshall, contrary to the former policy of the State Department, was impartial in his treatment of England and France, rigidly applying the same principles of law and justice to each; and the other, that he was a genuine American without flaw or alloy, inflexibly determined to assert the dignity, equality and sovereignty of the new nation.

IV

America's relations with Spain were somewhat similar to those with France, accentuated in each instance by territorial propinquity. Spain's possessions in the West Indies, Florida, and Louisiana were not only occasional causes of friction but they inexorably decreed the acquisition of additional territory within which American institutions might repose and develop. Marshall's duties were confined almost to a single aspect of these relations, which were now more critical by reason of Spain's alliance with France, since 1796, in the war with England. Not only did Spain seize and take American vessels into Spanish ports, but the prize courts of French Consuls sitting in Spanish territory unlawfully condemned and confiscated these vessels. Privateers were also fitted out in Spain, and under French commissions harried the seas for American shipping. Marshall took up this violation of neutral rights and international usage in a letter of instructions to David Humphreys, American minister to Spain, on September 8, 1800. This state paper ranks with his famous instructions to Rufus King of September 20, 1800, in tone, dignity, sense of justice, formidable logic, and sinewy diction. He vividly portrayed the relations between the two nations and the necessity of the continuance of the friendly intercourse which had been the uniform policy of the American Government. He stressed the reciprocal benefits resulting from neighbourly contact and good understanding, and the mischiefs that may be inflicted with so much facility in case of war, as among the motives for the preservation of peace. The fair and upright conduct of America demanded recip-

rocal conduct on the part of Spain, not only by virtue of treaty engagements, but by the laws and usages of nations. Marshall confessed that this "reasonable expectation" had suffered the keenest disappointment and he at once formulated the complaints of his Government:

1st. Privateers fitted out in Spanish ports, manned in whole or in part by Spaniards, and holding commissions from the French Republic, were seizing American merchantmen to a great and ruinous extent both in Europe and the West Indies. This practice, "in such direct and open opposition to the laws of nations and our subsisting treaty," he was unwilling to believe to have been sanctioned by the Government of Spain. While the United States had been reduced by necessity to arm for defense against France, still the American Government considered Spain a neutral and friendly power notwithstanding her alliance with France. He suggested that the superiority of the American naval force was competent to prevent the depredations of privateers issuing from Guadeloupe, but this was a small portion of the field covered by privateers, who "issue in swarms, which spread over the ocean, and capture indiscriminately every American vessel they fall in with, of inferior force. Thus to disable Gaudeloupe from doing essential injury avails us nothing. It only changes the quarter from which the attack proceeds."

Although the right of America's position was incontestable no remonstrance would have been made had not the cases been so multiplied, and the practice so open and systematic. In addition to international law and usage applicable to such misconduct there were plain treaty stipulations between the two Governments prohibiting such practices.

“2d. The merchant vessels of the United States prosecuting a peaceful and lawful commerce, have been, when captured and carried into the ports of Spain, condemned, with their cargoes, as good prizes to the captors.”

The frequency of such condemnations, he observed, rendered unnecessary the recital of particular cases, which, however, were well known to the American minister, as he had been lately supplied with a list of numerous transactions, and the losses to American citizens had assumed such proportions that the intervention of the American Government could not be longer withheld. Marshall then discussed in his usually lucid manner the law of capture and prize, and concluded by observing that Spain could not escape her obligations to a neutral and friendly nation by shifting the injuries to French consular tribunals set up in Spain with her consent. What Spain permitted and authorized to be done by another was done by herself, her responsibility was in no wise thereby diminished, and the unjust decisions of these tribunals stand as if they were the decisions of Spanish tribunals. He declared that neither the “frequency, nor the long continuance of these aggressions have as yet induced the United States to make reprisals,” but solicitude for good understanding and amicable relations with Spain cannot stand the strain of continued imposition and wrong, and that the United States might be driven reluctantly to take the remedy within her own hands. He then instructed Humphreys to demand of the Spanish Government:

“1st. That efficient measures be taken to prevent the equipping or manning of vessels in the ports of

Spain designed to cruise on the commerce of the United States, and that decisive orders be given to the proper officers to effect the restoration to the owners of all vessels with their cargoes so taken and which may be brought within the extent of the jurisdiction of His Catholic Majesty.

“2d. That means be taken to prevent the condemnation of any American vessels or cargoes in Spain, by any tribunal whatever, on principles incompatible with the law of nations, or our treaty.

“3rd. That in all cases, where American vessels or cargoes have been captured by privateers, equipped or manned in whole or in part in the ports of His Catholic Majesty, and all means in his power have not been used to restore them; and in all cases where such vessels and cargoes have been condemned either by the French Consular Tribunals in Spain, or the ordinary Tribunals of the country, contrary to the law of nations, and the subsisting treaties between the two powers, full compensation be made by the Government of Spain to the owners of such vessels and cargoes.”²⁷

Marshall was sanguine that the present negotiations with France would terminate happily, but if not Spain was relieved in no wise of making compensation for past injuries and desisting from future depredation upon American commerce.

Marshall renewed the complaints in a letter to Humphreys on September 23, 1800, citing cases of flagrant depredations and unjust adjudications in consular courts. He insisted on his demand that the award made against

Spain in favour of the claim of Gregorie and Scobie on May 28, 1799, according to the mixed claims commission under Article XXII of the treaty of 1795, should be executed in conformity with treaty stipulations between the two governments. Marshall understood that the refusal of the Court of Madrid to pay was that the Spanish commissioner had not signed the award. The validity of this excuse he resisted, because the award had been signed by two of the commissioners, which was the full requirement of the treaty. Further difficulty arose out of the refusal to pay the award in specie, which was a plain violation of the treaty in attempting to discharge "a debt by paying one half its nominal amount, and the whole of its nominal amount possessing only one half of its real value," by reason of depreciated currency.

Marshall again complained that "American property captured by their [British] cruisers and recaptured by those of a friendly power [Spain] ought to be restored to the original proprietor on paying salvage," and that there could be no pretext for holding American vessels and cargoes taken by cruisers from the possession of England and Spain. Marshall, as late as January 5, 1801, continued his instructions to Humphreys upon the "subject of the depredations committed by Spanish privateers on American commerce," expressing his surprise that the Spanish Government could hesitate in the establishment of a board with powers to ascertain the amount of these depredations, and to pay the sum found. He then strongly expressed the opinion that "if the claims of justice are to be attended to, or if a good understanding with the United States be worth preserving, Spain cannot be inattentive to our remonstrances on this sub-

ject.²⁸ He concluded with a request that compensation should be obtained for these spoliations "without impeding an arrangement for a general settlement" of such claims.

Two instances may be given of Marshall's practical disposition of the claims in question. The *Rebecca Henry*, an American vessel, was captured by a French privateer, subsequently recaptured by Americans, resulting in the killing of the master of the prize, and again captured by another French privateer and brought in to a Spanish port, where the prisoners were threatened with death. In this case Marshall wrote Adams on August 2, 1800 that he thought it "proper to remonstrate and to threaten retaliation if the prisoners should be executed."²⁹ Another instance was the capture in a Spanish port, by an American officer, of a French ship which was by agreement to be transferred to France. Marshall judicially considered the case, and advised Adams by letter that he had "directed the *Sandwich* to be given up to the minister of his Catholic Majesty." The American captain declined to obey the directions. Marshall advised Adams that the Government had no right to interpose so far as the captors were concerned, and he directed the delivery of the vessel.

The activity of the notorious Bowles in inciting the Indians against the Spanish possessions in Florida, together with his claim of the support of Great Britain, gave Marshall deep concern. The Spaniards at once took affront at this action, and Marshall informed Adams that steps had been taken to suppress Bowles. Adams, however, thought that "the military forces . . . should join [the Spaniards] in an expedition against Bowles," but

Marshall did not concur in this view, and wisely advised that the presence of American troops in the Floridas would excite Spain's jealousy, and moreover that the forces of the latter were entirely competent to deal with the situation."³⁰

Liston, the British minister, disavowed any British connection with Bowles, but at the same time truculently demanded that Marshall should "meet these insidious calumnies by a flat and formal contradiction." Marshall, without waiting a moment for Adams's approval, replied that "newspaper charges and surmises . . . are always causes of infinite regret and wou'd be prevented if the means of prevention existed," and further reminded the minister that the British Government itself was not blameless, and that he might find examples in his own Government of the "impunity with which a foreign friendly nation [America] may be grossly libel'd."³¹

V

Our heavy account with the Barbary corsair powers was still unsettled, when Marshall came to the Department of State. Sweden and Denmark proposed to the United States the employment of joint naval forces in the Mediterranean for the protection of their commerce from these pirates. Marshall while in earnest sympathy with the object of the joint enterprise, declined the proposal upon two grounds: 1st, the existing treaty arrangement, which in good faith should be performed however burthensome; 2d, that until the hostilities between the United States and France shall cease America would run

an undue hazard in stationing her frigates in Mediterranean waters.³²

Marshall also wrote to Richard O'Brien on July 29, 1800, deploring the uncertainty of financial accounts between those powers and the United States, urging a lump sum in specie to be adopted in lieu of the annual exactions, which would have been a very practical disposition of the subject. His interest in the matter is further evidenced in a letter to King of August 16, 1800, in relation to jewels claimed by the Bey of Tunis, wherein Marshall requested King to keep him, "constantly informed of the actual state of our affairs with the Barbary Powers."³³

VI

With the administrative activities of his department Marshall kept in close touch. Mr. Beveridge, in his notable biography, is of opinion that he was "the practical head of the Government" during his service in the State Department.

The Secretary responded to the President's request to secure the concurrence of the Cabinet in approval of the pardon of Isaac Williams, convicted of waging war on the high seas against Great Britain, in violation of the terms of Jay's Treaty. This famous case involved the question of the right of expatriation. Chief Justice Ellsworth sat with the federal district judge, and in a succinct and logical opinion denied the right of Williams to expatriate himself and become a citizen of France, broadly declaring that no such right can be exercised by any American citizen unless consented to by his Government. Adams

assigned the cause of clemency to be "the man's generosity to American prisoners," and "his present poverty and great distress."³⁴

There can be no doubt that Adams leaned more and more upon Marshall as the end of his term approached. For example, he requested his views upon the President's farewell address to Congress on December 3, 1800.³⁵ Marshall complied by writing this address. Beveridge states that the entire speech is in the handwriting of Marshall. The style of this address is that of Marshall and not of Adams, and it exhibits Marshall's capacity for the consideration of rather a wide range of subjects, not forgetting, however, to mention the salient matters involved in our foreign relations, and the maintenance of a national defense adequate for the protection of national rights.

The closing weeks of Adams's Administration were filled with difficulties and turbulence. Ellsworth had resigned as Chief Justice, Jay was reappointed but declined, and on January 20, 1801, Adams nominated Marshall, who was confirmed one week thereafter. On January 31, 1801, he received his commission, and the following week he entered upon his great career in that office, only to end upon his death thirty-five years later. Between January 31 and March 4, 1801, he discharged the duties of both these high offices, but accepted only the salary of Chief Justice.

The last month of Marshall's term was an *ad interim* appointment, so it is fair to infer that his principal activities of service were confined to a term of eight months. We find in *Miscellaneous Letters*, volume twenty-six, in the State Department, a memorandum of February 2,

1801, written entirely in Marshall's own hand. This memorandum should be read in full by every student of Marshall's life. It is a succinct grouping of the questions which would confront his successor: (1) the affairs of the Barbary Powers, among whom he expects "some mischief from Tripoli," renewing his advice that the payment of a lump sum should be made in lieu of stipulated annuities which exposed the Government "to considerable frauds"; (2) the state of American affairs "with Spain will command the very serious consideration" of his successor; and (3) the complaints of American merchants against increased depredations by Great Britain. Marshall made appropriate reference for information relating to each of the subjects, thus revealing his official fidelity and close scrutiny of all material matters in his Department to the minute of his resignation.

Marshall's tenure of the office of Secretary of State was a brief but important incident in his long public career. His judicial opinions upon international questions justify the conviction that he would have made as great a Secretary of State as he made a Chief Justice had a longer term been given him in the field of statecraft. This conclusion is almost inevitable from a perusal of his leading opinions upon the Supreme Bench. For example, the argumentative power exhibited in the famous memorial to France and in his instructions as Secretary of State to the American minister at London in regard to the law of blockade is surpassed in his late judicial opinion upon the same subject.³⁶ It is also manifest in his opinion upon the equality of states, wherein he expounded not only the law of equality, but the cognate principles applicable thereto.³⁷ So in his opin-

ions upon the right of visit, seizure and search;³⁸ upon the relation of international law practised in the United States to the international law recognized by England, so far as English precedents before the Revolution, and even judgments delivered later, were to be considered or followed;³⁹ and upon the status of slaves captured by pirates, in which he considered the origin, nature and extent of the law of nations not only as applicable to the case but to municipal law as well, which opinion is accepted to this day throughout the English-speaking world as a fundamental authority upon the subjects discussed.⁴⁰

In legislative and political bodies, in diplomatic mission, in executive and juridical departments, Marshall's mind was so frequently and powerfully exerted in ascertaining and determining the rights, duties and laws of nations that it must be an abiding source of interest and regret that he did not have a longer tenure of service in the office of Secretary of State.

Into the remainder of John Marshall's life, those many years in which as Chief Justice of the United States he wrote into our history those nationalizing decisions of the Supreme Court which have since affected so significantly our growth as a nation, we have no call to journey. Those years and those labours have been narrated and interpreted in Mr. Albert J. Beveridge's monumental biography of Marshall, to which the reader is referred.

He died in his eightieth year, on July 6, 1835.

APPENDICES

APPENDIX

TO SKETCH OF JEFFERSON

BIBLIOGRAPHICAL NOTE

In this study the principal sources have been the diplomatic archives of the United States, France, Great Britain and Spain. The author has been through the manuscripts containing Jefferson's official correspondence, as now preserved in the Department of State, Bureau of Indexes and Archives. The printed collections of the diplomatic correspondence of the United States are: *Diplomatic Correspondence of the United States of America, September 10, 1783 to March 4, 1789* (Wash., 1833, 7 vols.; 1837, same in 3 vols.) cited as *Dip. Corres.*; and *American State Papers, Foreign Relations* (Wash., Gales and Seaton, 1834) cited as A. S. P., F. R. They contain perhaps one-fourth of the actual correspondence of significance, but a great majority of Jefferson's diplomatic correspondence not printed in these official collections is to be found in the several editions of his printed *Writings*, of which that of P. L. Ford is most useful. The diplomatic correspondence of the French ministers in the United States and their instructions are to be found in the French transcripts (for the period 1783-1788) in the Library of Congress, in F. J. Turner's edition of the "Correspondence of the French Ministers to the United States, 1791-1797," in the *Annual Report* of the American Historical Association for 1903, Vol. II, and (for 1788-1790) in the *American Historical Review*, Vols. VIII and IX. The author has also consulted certain other French diplomatic sources in the *Archives des Affaires Étrangères* at Paris.

The diplomatic and colonial correspondence of Great Britain has been studied in manuscript form in the Public Record

Office at London, and also in the Canada Archives, Ottawa. That of Spain has been studied in Madrid.

Since Anglo-American diplomacy during Jefferson's Secretaryship has already been presented in detail in the author's *Jay's Treaty: A Study in Commerce and Diplomacy* (N. Y., Macmillan, 1923), the reader is referred to that for more detailed bibliography on Anglo-American relations. For Spanish-American relations, see the author's companion study, *Pinckney's Treaty; a Study of America's Advantage from Europe's Distress, 1783-1800* (Baltimore, Johns Hopkins Press, 1926). Because of these studies, and the availability of Jefferson's printed works, it has been felt undesirable to document the above text with numerous footnotes.

Concerning source material on Jefferson and the more important biographical studies of him one can do no better than quote (with permission), the following appraisal by the historian Edward Channing, in a note to his *History of the United States*, Vol. IV, pp. 272-274:

"Jefferson's manuscripts are preserved in several different places. The 'Official Papers' are in the Library of Congress, the 'Private Papers' are in the cabinet of the Massachusetts Historical Society. The separation was not skilfully done, so that some papers that might fairly be called official are at Boston. Besides, there are still several small collections in private hands. Jefferson was a most voluminous writer; he used either a wet copying press or a machine, called the polygraph, that wrote two copies at once. He filed away masses of papers with an unstinted hand and destroyed others for various reasons. The Department of State printed a *Calendar of the Correspondence of Thomas Jefferson* in 1894, but a complete list of the private papers has never been printed. There are three sets of the *Writings of Jefferson*. The most complete is the 'Memorial edition' in twenty volumes, Washington, 1903. Ford's edition in ten volumes (New York, 1892-1899) is more usable, but unfortunately does not repeat all the matter printed in the

nine-volume 'Congress edition' (Washington, 1853-1854). A selection from the private papers forms volume 1 of the 7th series of the *Collections* of the Massachusetts Historical Society. A mass of material that Jefferson put together in his old age under the title of 'Anas' is printed in the first volume of the Ford edition and by itself as *The Complete Anas of Thomas Jefferson* (New York, 1903). Some of this matter may fairly be called original material, but much of it is simply the recollections of an old man with a somewhat unreliable memory. There have been numerous biographies and papers relating to all or a part of Jefferson's varied career. Of these, the biography by H. S. Randall (3 vols., New York, 1858) is markedly prejudiced and valuable for that reason. George Tucker *Life of Thomas Jefferson* (2 vols., Philadelphia, 1837) is interesting as giving a Virginia view, and Cornelius de Witt's *Thomas Jefferson, Etude historique sur la démocratie américaine* is important as being a distinctly foreign, but sympathetic analysis. Schouler's brief biography perhaps best expresses the man, Thomas E. Watson's little sketch gives the view of a modern southern radical, and Parton's one-volume biography (Boston, 1874) is by far the most readable of them all. Paul Leicester Ford's *Thomas Jefferson (Monographs of the American Revolution)* is a beautiful bit of book-making and written by one who was thoroughly conversant with his theme.

"L. H. Boutell privately printed at Chicago in 1891 an interesting study of *Thomas Jefferson, the Man of Letters* and there is a stimulating paper on "Jefferson as a Naturalist" in the *Magazine of American History*, xii, 379. Jefferson's granddaughter, Sarah N. Randolph, wrote a volume entitled *Domestic Life of Thomas Jefferson* and also printed an analysis of his private character in the *North American Review*, xci, 115. There is a book by H. W. Pierson entitled *Jefferson at Monticello*, which represents the recollections of an old man who, some years earlier, had been Jefferson's superintendent,—many of the anecdotes are plainly impossible. B. L. Rayner's

Sketches of the Life, Writings, and Opinions of Thomas Jefferson is most favourable to him and often seems to be authentic. Of hostile views, those by William Sullivan in his *Familiar Letters on Public Characters* and by Theodore Dwight in a book entitled *The Character of Thomas Jefferson, as exhibited in His Own Writings* are thoroughly antagonistic, and the same may be said of two volumes which were written by Stephen C. Carpenter and printed at New York in 1809 with the title of *Memoirs of the Hon. Thomas Jefferson, . . . with a View of the Rise and Progress of French Influence and French Principles in that Country* [the United States].

“C. H. Hart’s *Browere’s Life Masks of Great Americans* has a representation of Jefferson which is undoubtedly the most authentic of many attempts to preserve his lineaments for future ages.”

Since the above was written there have appeared (among many) four notable books which deal with Jefferson and his period: David Muzzey, *Thomas Jefferson* (N. Y., 1918); Albert J. Beveridge, *The Life of John Marshall* (N. Y., 1916); and Claude J. Bowers, *Jefferson and Hamilton* (N. Y., 1925). Of the last two books mentioned, each is a good antidote to the other. Albert J. Nock, *Jefferson* (N. Y., 1926), is a luminous essay on Jefferson’s character and conduct. For Jefferson’s associations with French political thinkers and ideologists, see the works of Professor Gilbert Chinard.

FOOTNOTES

¹ La Luzerne to Vergennes, Philadelphia, May 17, 1784. *Archives des Affaires Étrangères, Correspondence Politique*, XXVII, 362. Library of Congress Transcripts.

For previous comments by the French Minister on Jefferson, see Bancroft, *History of the Formation of the Constitution of the United States*, I, 379.

² Nov. 11, 1784, *Works* of Jefferson (Federal ed.), IV, 372.

³ *Dip. Corres.*, II, 97, 163, 187.

⁴ See *ante*, Vol. I, 205.

⁵ Pointe-au-Fer and Dutchman's Point, on Lake Champlain; Oswegatchie, Niagara, Erie, Detroit, Michlimackinac.

⁶ *Ante*, Vol. I, 263.

⁷ E. S. Corwin, *French Policy and the American Alliance*, 359.

⁸ Bernard Fay, *L'esprit révolutionnaire en France et aux États-Unis à la fin du XVIII^e siècle*, 174-232.

⁹ A. S. P., F. R., I, 110; Jefferson, *Writings* (Ford ed.), V, 412.

¹⁰ See dispatches of the French Minister in the United States, 1783-1786, in Library of Congress transcripts.

¹¹ *Writings* (Ford, ed.), V, 111.

¹² See below, p. 88.

¹³ In the hope that the negotiations with Hammond might possibly lead to some settlement, Jefferson had postponed in 1791 a report which he had prepared on discriminations by foreign governments against American commerce. One of his last acts as Secretary of State was to submit this report to the House of Representatives, Dec. 16, 1793. It contrasted graphically the favourable commercial privilege allowed by France to American ships and goods in the West Indies with the British policy of total exclusion, and was one of the elements which aroused a well-justified feeling against Great Britain in the crisis of March, 1794.

¹⁴ Thomas Pinckney was sent to London as Minister some months after Hammond arrived in Philadelphia.

Jefferson himself indulged in intrigues against Hamilton's conduct of the Treasury which would not today be compatible with proper loyalty to a Cabinet colleague. He encouraged Madison and other Republican leaders in the House to attack Hamilton's probity in his administration of the Treasury, an attack against which Hamilton defended himself with an ability and brilliancy which reflected even greater credit on

his reputation as a public financier. In his old age Jefferson admitted Hamilton's personal integrity in all financial matters, public and private. Hamilton lowered his dignity measurably by indulging, under a transparent veil of anonymity, in newspaper attacks on his colleague. Jefferson did not stoop to this, although he privately applauded the attacks on the financial policy of the Federalists which appeared in Freneau's *National Gazette*, which he was instrumental in establishing as a Republican organ, and which was edited by a man to whom he gave a small job as translator in the State Department. On the Freneau affair one may quote a recent biographer of Jefferson. "It does not seem to have occurred to Hamilton that, if it was improper in a man who received a small fee (a pound a week) as translator of foreign periodicals for the State Department to edit a weekly review which criticized the Secretary of the Treasury, then it was doubly and trebly so in a Secretary of the Treasury with a salary of \$3,500 to write articles for another editor against his senior colleague, the Secretary of State." (F. W. Hirst, *Life and Letters of Thomas Jefferson*, 281.)

¹⁵ Jefferson to Humphreys, Phila., April 9, 1792, *Works* (Ford ed.), V, 502.

¹⁶ Jefferson, searching for further support, also claimed that Floridablanca told Lafayette in 1784 that it was His Catholic Majesty's intention to recognize the principle of the boundary line of the Anglo-American peace treaty, though he intended also to ascertain "whether it can be in any way inconvenient or prejudicial to settle that affair amicably with the United States."

It is perhaps sufficient to point out the qualifications introduced into this ambiguous statement, but one may add that Lafayette had no official status, and that the Spanish King could not be bound by any remark which his minister might make to a private individual. Floridablanca refused to be committed by this.

¹⁷ Jefferson, *Works*, V, 460–485. He had already proposed something of the kind, in instructions to Carmichael during the Nootka crisis, in the guise of a free port.

¹⁸ These two agents had acted as *locum tenens* in the Spanish legation, ever since Gardoqui's departure, first Viar, then Jaudenes and Viar together, then Jaudenes alone. They had no real diplomatic rank, though they were treated as "commissioners."

¹⁹ A. S. P., F. R., I, 267.

²⁰ In making these remarks the War of 1812 is not overlooked. Had Great Britain been able to use her veteran troops in Canada at that time, the actual frontier of the United States might not have survived.

²¹ The President also asked whether the United States ought to receive a minister from the "future regent of France" should he be sent, and whether Congress ought to be called in special session. Answer to the first became unnecessary when Genet was received; and the second was decided in the negative.

Jefferson believed that Hamilton drafted these questions for Washington, in such a way to imply a refusal to receive the new minister.

²² Speaking of the French Revolution, in his old age, in his autobiography, Jefferson said: "The appeal to the rights of man, which had been made in the United States was taken up by France, first of the European nations. From her the spirit spread over those of the South. The tyrants of the North have allied against it, but it is irresistible. Their opposition will only multiply its millions of human victims; their own satellites will catch it, and the conditions of man thro' the civilized world will be finally and greatly ameliorated. This is a wonderful instance of great events from small causes. So inscrutable is the arrangement of causes and consequences in this world that a two-penny duty on tea, unjustly imposed in a sequestered part of it, changes the condition of all its inhabitants."

²³ In 1787 upon the occasion of the crisis arising out of Prussian intervention in the Netherlands, Jefferson was asked by Sir William Eden, British ambassador at Paris, what the effect of the American treaty with France would be in case of a war between France and Great Britain. "I told him frankly, and without hesitation," Jefferson recorded thirty-four years later in his autobiography, "that our dispositions would be neutral, and that I thought it for the interest of both these powers that we should be so; because it would relieve both from all anxiety as to feeding their W. India islands. That England, too, by suffering us to remain so, would avoid a very heavy land-war on our continent, which might very much cripple her proceedings elsewhere; that our treaty indeed obliged us to receive into our ports the armed vessels of France, with their prizes, and to refuse admission to the prizes made on her by her enemies; that there was a clause also by which we guaranteed to France her American possessions, which might perhaps force us into war, if these were attacked. 'Then it will be war,' said he, 'for they assuredly will be attacked.'"

It was the treaty of commerce and amity, of course, and in regard to reception of privateers. Jefferson does not appear to have communicated this conversation to his Government, though he did to the American chargé at Madrid, William Carmichael.

²⁴ The several loans and gifts are thus tabulated by Professor Latané:

Gifts, for which repayment was never demanded or offered:

	<i>Livres</i>
1776, June 10.....	1,000,000
1777.....	2,000,000
1781.....	6,000,000
1782, interest remitted on loan of 1778, about	2,000,000
	<hr/>
	11,000,000

Loans, repaid in full:

1777, from the Farmers-General	1,000,000
1778, advanced in 21 instalments, 1778-1782	18,000,000
1781, obtained by France from Holland . . .	10,000,000
1783, advanced through Franklin	6,000,000
	<hr/> 35,000,000

J. H. Latané, *Our Revolutionary Debt to France*, address printed in *Baltimore Sun*, May 2, 1925, and later privately reprinted.

A livre is approximately a franc, and worth 18.15 cents.

²⁵ On January 1, 1794 there was due France a balance of \$2,461,513.61. A. S. P., *Finance*, I, 293. After May 22, 1793, date of Genet's application, there was due France during the year 1793, \$575,925.73. See Schedule of Payments of French and Dutch Loans, *Continental Congress Broad-sides*, Library of Congress. Thus there was due to France after May 22, 1793 a total of \$3,187,513.61. Deducting from this \$726,000 furnished for French relief in Santo Domingo (Jefferson, *Writings*, Ford ed., VI, 161) we have left \$2,461,513.61. These figures would probably not tally precisely with the French account, by reason of divergent estimates of depreciation through early payments in *assignats*, and interest on advanced payments in 1792.

²⁶ In 1790 and 1791 payments had been made in *assignats*, but after they began to depreciate, Jefferson, in agreement with the Secretary of the Treasury, notified the French minister, September 1, 1791, that it was not the intention of the United States to take advantage of this depreciation, and it would make compensation for losses incurred thereby by France. Some dispute occurred as to the exact figures of such losses by depreciation, but they were eventually successfully adjusted.

²⁷ None of the French loans had borne more than five per cent interest.

²⁸ A. S. P., *Finance*, I, 380, 671; R. A. Bayley, *Public Debts of the United States*, 41. See act of March 3, 1795 *U.S. Statutes*, I, 433. For a masterly and perfectly impartial history of the United States pecuniary debt and its payment to France, based on documentary sources in the French archives, see the eminent French historian, A. Aulard, "La dette américaine envers la France," in *Revue de Paris*, 15 mai and 1 juin, 1925.

²⁹ It is to the credit of Washington and his advisers that they solved these problems of neutrality in a very practical if not a strictly constitutional way. The Attorney-General drew up a list of principles of international law laying down neutral rights and obligations, crystallized from a study of European treaties and practice. These were then issued August 4, 1793, by the Secretary of the Treasury in a circular to the collectors of the customs, the only officers at the several ports capable of taking charge of maritime matters. They were bidden to watch out carefully for violation of the rules of international law therein stated, and to co-operate with the governors of the several states for execution of federal law—or, as it was in this instance, international law. It was not uncommon, in the early years of the republic, for the President to appeal to the several governors for execution of federal law or assistance in federal administration, though there appears to be no constitutional basis for it; for example, it was the governors of the maritime states, who were to be requested by the collectors to order out of American ports the objectionable French privateers.

The principles thus deduced by Washington's Administration for the definition of neutral conduct are so important in the subsequent history of American foreign relations as to justify quotation:

"1. The original arming and equipping of vessels in the ports of the United States, by any of the belligerent parties, for military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant vessels, by either of the bel-

ligerent parties, in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

“3. Equipments in the ports of the United States, of vessels of war in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the 17th article of our treaty of amity and commerce with France.

“4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize, etc.

“5. Equipments of any of the vessels of France, in the ports of the United States, which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.

“6. Equipments of every kind, in the ports of the United States, as of privateers of the Powers at war with France, are deemed unlawful.

“7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the 18th article of our treaty with France, the 16th of our treaty with the United Netherlands, the 9th of our treaty with Prussia; and, except those mentioned in the 19th article of our treaty with France, the 17th of our treaty with the United Netherlands, the 18th of our treaty with Prussia.

“Vessels of either of the parties, not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens,

not being inhabitants of the United States; except privateers of the Powers at war with France, and except those vessels which shall have made prize, etc." In addition it was explained to the collectors of the customs:

1. That in case one of the belligerent enemies of France should bring or send within the customs district a prize made from France or French subjects, the Governor of the State was to be notified, in order that measures might be taken, pursuant to the obligations of Article 17 of the treaty of amity and commerce with France, to oblige such vessel and her prize, or such prize, then sent in alone, to depart.

2. No privateer the enemy of France could by Article XXII of the same treaty enjoy any other privilege than that of purchasing such victuals as should be necessary for her going to the next port of the prince or state from which she had her commission.

3. No armed vessels originally fitted out in an American port by either belligerent henceforth to have asylum in any district of the United States.

4. Contraband was defined as "articles commonly called contraband, being warlike instruments and military stores." Trade in this was not to be interfered with by the United States Government.

5. Customs collectors were carefully to observe and report the cases of any American citizens found in the service of either belligerent.

³⁰ See Fenwick, *Neutrality Laws of the United States*, 20-30, for this act and its high standard of neutrality.

³¹ The personnel of the Department at this time included in addition to the Secretary, one clerk and one translator. Jefferson received an annual salary of \$3,000, Hammond, the British minister, \$12,000, Gardoqui, Spanish *chargé d'affaires*, \$11,000.

APPENDIX

TO SKETCH OF RANDOLPH

BIBLIOGRAPHICAL NOTE

The foregoing study of Randolph as Secretary of State is based on the sources of his official career as existing in the diplomatic correspondence of the United States. A portion of these are published in the familiar but by no means complete edition of *American State Papers, Foreign Relations* (Washington, 1832, edited by Gales and Seaton), Vol. I. What is not therein printed is in the manuscript archives of the State Department, where it was used by the author. Randolph's personal papers are available in part, with some published documents, in the imperfect biography by Moncure D. Conway, *Omitted Chapters of History Disclosed in the life of Edmund Randolph*, N. Y., 1888; in Edmund Randolph's own *Vindication of Mr. Randolph's Resignation*, (Phila., 1795, reprinted in 1855), and in a few Randolph MSS. in the Library of Congress. There is some Randolph material, in relation to the Jay Treaty, in *The American Historical Review*, Vol. XII. The familiar published "Writings" and "Works" of Washington (Sparks, and W. C. Ford editions), of Jefferson (P. L. Ford, and "Memorial" editions), of Hamilton (J. C. Hamilton, and H. C. Lodge editions) are indispensable. The Hamilton, Jefferson, Washington, and Madison papers, in the MS. collections of the Library of Congress have been used. An examination of material in the Civil Accounts Division, Washington, has been made, as also of records and papers in the Office of the Clerk of the United States District Court, Richmond. Much material may be found in a discriminating use of J. C. Hamilton's *History of the Republic of the United States of America, as traced in the Writings of Alexander Hamilton*, etc. (N. Y., 1856-1860).

The monograph of S. F. Bemis, *Jay's Treaty; a study in Commerce and Diplomacy* (N. Y., Macmillan, 1923), traces the negotiation of Jay's Treaty as revealed in foreign as well as American archives.

The correspondence of the French ministers during Randolph's official career is edited by F. J. Turner in the *Annual Reports* of the American Historical Association for 1903, Vol. II.

Where statements in the text are based on sources already published, they are, as a rule, not documented, as they may easily be checked in the published works. The author has given citations in footnotes to sources not published, and to others not so easily available, or not familiar to the reader reasonably well versed in American history.

FOOTNOTES

¹ Farrand, *Records of the Federal Convention*, II, 137-150.

² Jefferson, *Papers*, Library of Congress.

³ *Ibid.*

⁴ Morse, *Jefferson*, 134.

⁵ Randolph handled Washington's legal business in Virginia without charge.

⁶ Wirt, *British Spy* (1832), 207.

⁷ Conway, *Edmund Randolph*, 213. Randolph later in *Political Truth*, which he published anonymously in 1796, says (page 20) "he never previously to his late *Vindication*, announced to the public his political sentiments. They seem to have been known to no man without the pale of the government. The leading principle of his political life, however mistaken it may have been, was to be of no party. This principle he seems never to have abandoned."

⁸ Department of State, *Domestic Letters*, 6.

⁹ Washington, *Papers*, Library of Congress.

¹⁰ A. S. P., F. R., I, 427-428. For the French debt problem see *ante*.

¹¹ Washington, *Papers*.

¹² *Ibid.*

¹³ Randolph to Washington, January 26, 1794. Washington, *Papers*.

¹⁴ Department of State, *Domestic Letters*, 6.

¹⁵ *Ibid.*

¹⁶ Hamilton, *Papers*, Library of Congress, May 19, 1794.

¹⁷ Rives, *Madison*, III, 423 note, quoting from a letter of Madison, April 28, 1794.

¹⁸ Department of State, *England*, III, letter of June 23, 1794. Instructions to Jay indicate that our Government was apprehensive that Pinckney's feelings would be hurt.

¹⁹ Hamilton, *Papers*.

²⁰ Hamilton later said he much disapproved of the instructions. Hamilton, *Works*, ed. Lodge (Constitutional), X, 151, 152.

²¹ Department of State, *Spain*, Notes, I.

²² Jefferson, *Papers*.

²³ *Ibid.*

²⁴ Quoted in Trescot, *Diplomatic History of the Administrations of Washington and Adams*, 247.

²⁵ *Ante*, Vol. I.

²⁶ Italics inserted.

²⁷ Jay wrote Hamilton, July 11, 1794, "I think it best that they [certain facts given by him] should remain unmentioned for the present, and they made no part of my communications to Mr. Randolph, or others. This is not the season for such communications; they may be misinterpreted, though not by you."

²⁸ Department of State, *England*, I.

²⁹ Department of State, *Instructions*, II.

³⁰ *Ibid.*

³¹ On May 5, 1794, December 10, 1794, March 7, 1796,

Department of State, *England*, III. See also Bemis, *Jay's Treaty*, 249.

³² Washington, *Papers*; Hamilton, *Works*, ed. Lodge (Constitutional), V, 135, 136.

³³ Washington, *Papers*. Then follow three pages of argument in favour of this proposal.

³⁴ Turner, *Correspondence of French Ministers*, 741-743. Adet says that having purchased a copy of the treaty and seen that French interests were injured, he determined, in order to influence public opinion, to publish an extract. Accordingly, without its being suspected that it came from him, he had the extract published in the *Aurora*. The effect intended was produced; whereupon he went to call on Randolph and asked him if the treaty published in the papers was the same as that ratified by the Senate. Randolph defended the treaty and gave him a copy. (June 30, 1795.)

³⁵ See an interesting letter from Jay to Washington, March 1, 1794. He sends Washington half of some seed sent to him. Washington, *Papers*.

³⁶ Bemis, *Jay's Treaty*, 267, quoting R. Guyot, *Le Directoire et la paix de l'Europe*, 1795-1799, 558.

³⁷ Schouler, *United States*, I, 308.

³⁸ This order was issued in April, 1795. It was not published. The substance of it, as stated by John Bassett Moore, was: "That it directed His Majesty's ships of war and privateers to stop and detain all vessels laden wholly or in part with corn, flour, meal, or other articles of provisions and bound to any port in France and to send them to such ports as might be most convenient, in order that such corn or other articles might be purchased in behalf of the government." *History of International Arbitrations*, I, 310.

³⁹ *Am. Hist. Rev.*, XII, 587. Randolph's own answer was given in his letter of July 12, which also contains an elaborate and interesting examination of the treaty and recommends ratification on larger grounds, despite the defects in the treaty.

⁴⁰ This long and comprehensive letter of July 12, 1795, is printed along with other Randolph material in *Am. Hist. Rev.*, XII, 590, also in part in Randolph, *Vindication* (1855), 20.

⁴¹ Randolph, *Vindication* (1855) 20, 21.

⁴² Randolph, *Papers*, Library of Congress. Randolph, *Vindication* (1855), 23.

⁴³ September 5.

⁴⁴ A full text of this paper is found in Turner, *Correspondence of the French Ministers*, 445-455. No. 3 referred to in the letter was dated June 4, 1794, and is found in the above-mentioned Correspondence, 372-6. No. 6 was dated September 5 and is found on pp. 411-418.

⁴⁵ Mr. Conway unearthed this letter and other Correspondence between the English Foreign Minister and Hammond and published extracts in his Chapter XXVIII, under the title *Revelations from English Archives*.

⁴⁶ Gibbs, *Administrations of Washington and Adams*, I, 220.

⁴⁷ Marshall in his *Life of Washington*, 2d edit., II, 368, says: "The secretary of state maintained, singly, the opinion, that, during the existence of the provision order, and, during the war between England and France, this step ought not to be taken. This opinion did not prevail. The resolution was adopted to ratify the treaty immediately, and to accompany the ratification with a strong memorial against the provision order, which should convey, in explicit terms, the sense of the American Government on that subject."

⁴⁸ Randolph, *Vindication*, 7-10. Adet, Fauchet's successor, on August 26, 1795 (Turner, *Correspondence of French Ministers*, 774—), gave an account to his Government of an interview which Randolph had with him. He says Mr. Randolph came to see him at five o'clock in the morning of the day following the acceptance of Randolph's resignation and begged the French minister's assistance. Randolph told Adet that it was of importance not only to himself but to French interests that he be vindicated. Adet realized the importance of what

Randolph said and felt that "our [French] interest and the consideration due a man sacrificed at this moment would not permit me to abandon him under such circumstances." So Adet gave him a letter to Fauchet and also sent Fauchet a letter by his (Adet's) brother requesting him to comply with Randolph's request. He said that another reason that influenced him was that "Mr. Randolph assured me that if we would furnish him the means of vindicating himself, the House of Representatives would oppose the execution of the treaty." In his dispatch of September 30, 1795, Adet gives an account of Randolph's success with Fauchet. He says Randolph gave Fauchet a model [modèle] of the declaration he desired and that Fauchet sent him for delivery to Randolph a declaration almost identical with that furnished by Randolph. He adds that another motive influencing him in helping Randolph was an apprehension that otherwise Americans would henceforth not disclose themselves to him ("de s'ouvrir à moi").

⁴⁹ Wolcott said in a statement to John Marshall in 1806 that Washington and his advisers agreed that "neither Fauchet's dispatch nor any certificate of the French minister could be regarded as conclusive evidence in favour of or against Mr. Randolph." Gibbs, *Administrations of Washington and Adams*, I, 244.

⁵⁰ Senate Executive Documents, 50th Congress, Second Session, No. 58. See also Senate Journal for 50th Congress, Second Session, 101, 128.

⁵¹ In letter of December 31, 1795, to Giles, Jefferson, *Writings*, Memorial Edition, IX, 315.

⁵² Conway, *Randolph*, 368.

⁵³ Randolph, MSS., Library of Congress.

APPENDIX

TO SKETCH OF PICKERING

BIBLIOGRAPHICAL NOTE

The principal sources used in the preparation of this work were the diplomatic correspondence of the period published under the title of *American State Papers; Foreign Relations*. Pickering's *Review of the Correspondence between John Adams and W. Cunningham*, which gives Pickering's own view of his diplomatic career; *Life of Timothy Pickering* (Boston, 1862-1867), in four volumes, begun by his son, Octavius, and completed by the Rev. Charles W. Upham; the "Index" to the Pickering Papers, published by the Massachusetts Historical Society; an article on Pickering's career, by Senator Lodge, *Atlantic Monthly*, Vol. XII; J. B. Moore, *International Law Digest*, Vol. IV.

FOOTNOTES

¹ Washington's ability to shuffle Cabinet positions as he actually did, under stress of circumstances, was conferred upon him by the Act of May 8, 1792, which authorized the President to assign any person to perform the duties of any head of department "in case of death, absence from the seat of government, or sickness." A supplementary Act, Feb. 13, 1795, extended this authority to "any case of vacancy" in any of the Cabinet positions, "but not for a longer period than six months."

² S. F. Bemis, *Jay's Treaty*, 318-320; S. F. Bemis, *Pinckney's Treaty*, 347, 348.

³ This case involved the question whether a converted beligerent warship was liable to proceedings against it in a neutral court on account of alleged illegal acts committed within

the court's jurisdiction before the conversion. The case was eventually dismissed on a technicality, so that the court did not actually decide the question; but the dismissal itself is conceded a victory for the French contention of immunity.

⁴ These treaties were negotiated by employing local agents who had friendly access to the Mahommedan potentates concerned, and who would recommend the business as an act of condescension to suppliants offering tribute. This feature of the case stands out pretty plainly in the language of the treaty with Tunis, which sets forth that it was made:

“Under the auspices of the greatest, the most powerful, of all the Princes of the Ottoman nation, who reign upon the earth, our most glorious and most august Emperor, who commands the two lands and the two seas, Selim Kan the Victorious, son of Sultan Moustafa, whose realm may God prosper until the end of ages, the support of Kings, the seal of justice, the Emperor of Emperors;

“The most illustrious and most magnificent Prince Hamonda Pacha Bey, who commands the Odgiak of Tunis, the abode of happiness, and the most honored Ibrahim Dey, and Soliman Aga of the Janissaries, and chief of the Divan, and all the Elders of the Odgiak, and the most distinguished and honored Adams, President of the Congress of the United States of America, the most distinguished among those who profess the religion of the Messiah, of whom may the end be happy.”

⁵ In Hildreth's *History of the United States* the case is discussed in detail, with a warmth unusual in that calm and scholarly work.

⁶ The practical results are well illustrated by the action between the *Constellation*, Captain Truxton, and the French frigate, *Vengeance*, in which the rigging of the *Constellation* sustained the most damage, while the French vessel's hull was terribly battered. In rapidity of fire the American vessels surpassed their opponents.

APPENDIX

TO SKETCH OF MARSHALL

BIBLIOGRAPHICAL NOTE

The *Life of John Marshall* has been pretty definitively written by Albert J. Beveridge (Boston, Houghton Mifflin Co., 4 vols., 1916). A more intensive study of Marshall's activities as Secretary of State requires an examination of his dispatches written in that office. They are to be found in the files of the State Department, where they were consulted by the author. Most, but not all, of these are printed in *American State Papers, Foreign Relations*, Vol. II. (cited as A. S. P., F. R.) MS. and printed references are cited below in footnotes.

FOOTNOTES

¹ *Works of John Adams*, IX, 53.

² *Ex. Jour. Sen.* 353, May 12, 1800; *Register of State Dept.*

³ Marshall's *Autobiography*, MS. fragment. March 22, 1818.

⁴ A. J. Beveridge, *Life of John Marshall* (hereinafter cited as "*Bev.*"), II, 489.

⁵ Wolcott to Ames, Gibbs, *Administrations of Washington and Adams*, II, 401-402.

⁶ *Bev.* II, 492.

⁷ *Works of John Adams*, VIII, 549; *Bev.*, II, 218.

⁸ *Bev.* II, 123; Marshall to Washington, Aug. 31, 1795; *Washington MSS.*, Lib. Cong.

⁹ *Bev.* II, 297.

¹⁰ A. S. P., F. R., II, 243.

¹¹ Trescott, *Diplomatic History of the Administration of Washington and Adams*, 20.

¹² *Works of John Adams*, IX, 80, 81.

¹³ *Bev.* II, 523, citing *Adams MSS.*

¹⁴ A. S. P., F. R., II, 328.

¹⁵ *Bev.* II, 532, citing *Adams MSS.*

¹⁶ Trescot, *op. cit.* 231.

¹⁷ *Godoy's Memoirs*, I, 468.

¹⁸ This article stipulated that the states should put no legal obstacle in the way of the collection of these debts in sterling money.

¹⁹ Bemis, *Jay's Treaty*, 318, 320.

²⁰ A. S. P., F. R., II, 386-387.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*, 486.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Text in *Ibid.*, 490.

²⁷ State Department, *Instructions*, V, 358-359.

²⁸ *Ibid.*

²⁹ *Bev.* II, 496.

³⁰ *Bev.* II, 498.

³¹ Marshall to Liston, Sept. 6, 1800, cited by Beveridge from *Adams MSS.*

³² Marshall to John Q. Adams, June 29, 1800, Department of State, *Instructions to U. S. Ministers*, Vol. 5, 344.

³³ State Dept., *Instructions*, V, 345, 348.

³⁴ Adams to Marshall, Aug. 7, 1800, *Works of John Adams*.

³⁵ *Ibid.* IX, 85.

³⁶ *Fitzsimmons v. Insurance Co.*, 4 *Cranch*, 185.

³⁷ *The Exchange v. McFadden*, 7 *Cranch*, 116.

³⁸ *The Nereide*, 9 *Cranch*, 388.

³⁹ *Thirty Hogsheads of Sugar v. Royal*, 9 *Cranch*, 191.

⁴⁰ *The Antelope*, 10 *Wheaton*, 66.

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